Jon M. Sands
Federal Public Defender
District of Arizona
Jennifer M. Moreno (CA Bar No. 244967)
Therese M. Day (GA Bar No. 213810)
Amanda C. Bass (AL Bar No. 1008H16R)
Assistant Federal Public Defenders
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
jennifer_moreno@fd.org
therese_day@fd.org
amanda_bass@fd.org
602.382.2718 Telephone
602.382.2800 Facsimile

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF ARIZONA**

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| Clarence Wayne Dixon,<br><br>Plaintiff,<br><br>vs.<br><br>The Arizona Department of Corrections, Rehabilitation & Reentry (ADCRR); David Shinn, Director of the Arizona Department of Corrections, Rehabilitation & Reentry; James Kimble, Warden, ASPC – Eyman,<br><br>Respondents. | Case No. CV-22-00743-PHX-DJH(JFM)<br><br>DEATH-PENALTY CASE<br><br>**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION AND MEMORANDUM IN SUPPORT**<br><br>**Execution scheduled for May 11, 2022** |

Plaintiff Clarence Wayne Dixon, having filed his Complaint in the above-captioned case, moves pursuant to Federal Rule of Civil Procedure 65(a) for a preliminary injunction and/or a temporary restraining order preventing the Arizona Department of Corrections, Rehabilitation and Reentry ("ADCRR") from executing him without providing him with information relating to the "beyond-use date" ("BUD") of the drug that Defendants intend to use in his execution; specifically, the BUD itself and the concomitant scientific data that support that BUD. Defendants' written execution protocol prohibits them from using an expired drug to carry out an execution. Plaintiff seeks injunctive relief to prevent

Defendants from executing him in a manner that will deprive him of his rights under the First and Fourteenth Amendments of the United States Constitution, and 42 U.S.C. § 1983, and without proper adjudication of the claims brought in the concomitant lawsuit. This motion is supported by the attached memorandum.

**Memorandum in Support**

**INTRODUCTION**

Plaintiff Clarence Wayne Dixon is scheduled to be executed on May 11, 2022, by Defendants. Defendants have informed Plaintiff that in accordance with ADCRR's execution protocol, his execution will carried out using a five-gram dose of compounded pentobarbital.

Although Defendants' written protocol allows them to use compounded pentobarbital, it prohibits them from using an execution drug that has a BUD that is past the date an execution is carried out.[1] In order for Defendants to ascertain compliance with the BUD provision, they must obtain a BUD and supporting information from the facility that compounded the drug. This information must be based on standard scientific assays of compounded drugs. However, Defendants have neither demonstrated that the drug intended for use in Plaintiff's execution has a scientifically valid BUD, nor that they possess data to support the assignment of a BUD that is beyond the date of Plaintiffs' scheduled execution.

As described below, Plaintiff has repeatedly requested this information, but Defendants have failed to provide it. This information would be critical under ordinary execution-related circumstances, but the circumstances here—created by Defendants' actions related to their drug supply, *see infra*—are extraordinary. Defendants withdrew their initial attempt to obtain an execution warrant because their compounding pharmacist made errors in calculating the BUD of the execution drug. Yet, despite this critical failure,

[1] A "beyond-use date" is associated with individually prepared—i.e., "compounded"—drugs, whereas the term "expiration date" is generally associated with manufactured drugs.

Defendants continue to refuse to provide these standard BUD data, creating concerns as to whether the drugs will be expired at the time of Plaintiff's execution.

Accordingly, with Plaintiff's execution scheduled for one week from today, he has a heightened need for this information. While Defendants previously agreed to provide this information to him, they have not yet done so.

Defendants' failure to provide this information, which would enable Plaintiff to determine whether the State intends to execute him in compliance with the written execution protocol, violates Plaintiff's First Amendment right of access to governmental proceedings, and his right to Due Process under the Fourteenth Amendment to the United States Constitution.

Plaintiff, therefore, files this emergency motion for a temporary restraining order ("TRO") and/or a preliminary injunction, pursuant to Federal Rule of Civil Procedure 65, barring Defendants from carrying out his execution until Defendants have demonstrated that the compounded pentobarbital has been assigned a BUD that is based on scientifically valid specialized testing, and which is beyond the date of his May 11, 2022, scheduled execution. For the reasons outlined below, Plaintiff meets the standard for obtaining a preliminary injunction.

**Factual Background**

The full factual background is set forth in Plaintiff's complaint. *See* Compl. ¶¶ 22-93. The facts relevant to this motion are set forth below.

Plaintiff is scheduled to be executed by Defendants on May 11, 2022, using an execution drug protocol of five grams of compounded pentobarbital. Compl. ¶ 23. Defendant's written execution protocol prohibits them from using drugs "that have an expiration or beyond-use date that is after the date that an execution is carried out." Ariz. Dep't of Corr., Rehab. & Reentry, Dep't Order 710—Execution Procedures, Attachment D at 1 (April 20, 2022) ("DO 710") (Ex.1).[2]

[2]Available at https://corrections.az.gov/sites/default/files/policies/700/0710_031021.pdf.

The State of Arizona first initiated execution warrant proceedings against Plaintiff in April 2021 and claimed—without providing any evidence—that the compounded pentobarbital would have a 90-day BUD. Motion to Set Briefing Schedule for Motion for Warrant of Execution, *State v. Dixon*, No. CR-08-0025-AP (Ariz. April 6, 2021). However, the State's compounding pharmacist made an error and the State backtracked and admitted that the actual BUD of the drug had a drastically shorter BUD of only 45 days until "certain specialized testing" was conducted to extend it to 90 days. Motion to Modify Briefing Schedule at 2, *State v. Dixon*, No. CR-08-0025-AP (Ariz. June 22, 2021). The State explained that unless the BUD was extended, the drug would be unusable in an execution because the timeline between the initiation of the warrant procedure and the date an execution can be scheduled exceeds 45 days. *Id*. at 2-3.

On January 5, 2022, the State again initiated warrant proceedings for Plaintiff and claimed that "certain specialized testing" had been completed and again asserted—again without evidence—that the BUD of the drug was at least 90 days from the date of compounding. Motion to Set Briefing Schedule for Motion for Warrant of Execution at 2, *State v. Dixon*, No. CR-08-0025-AP (Ariz. Jan. 5, 2022).

Defendants have not provided any valid scientific data that establishes the BUD of the drug intended for use in Plaintiff's execution, let alone evidence to support its claim that "specialized testing" establishes that "the pentobarbital to be used in [Plaintiff's] execution will have a beyond-use date of at least 90 days." Motion to Set Briefing Schedule for Motion for Warrant of Execution at 2, *State v. Dixon*, No. CR-08-0025-AP (Ariz. Jan. 5, 2022).

Instead, Defendants have only produced ten heavily redacted pages of drug-test results from unidentified batches of compounded pentobarbital, none of which provide the assigned BUD. Compl. ¶¶ 39-44.[3] Those unidentified, redacted pages do not provide any connection to the compounded pentobarbital intended for use in Plaintiff's execution,

[3] On May 3, 2022, after the complaint was filed, Defendants produced two additional testing documents that again provided no information about how the results are connected to the drug intended to be used in Plaintiff's execution and did not provide the BUD. (Ex. 14)

much less any evidence that the drug will not be expired on the date of Plaintiff's scheduled execution. These data are critical, because if scientifically valid methods have not been used to extend the BUD, the compounded pentobarbital intended for use in Plaintiff's execution, would have expired on April 18, 2022, at the latest—almost a month before the date of Plaintiff's execution.

1. Plaintiff has repeatedly requested information about the drugs Defendants intend to use in his execution.

Plaintiff has repeatedly sought this information about the drugs intended for use in his execution, but Defendants have failed to provide any information regarding the BUD and the supporting scientific data, including the "specialized testing." In March 2021, as soon as counsel for Plaintiff, the Office of the Federal Public Defender (FPD), became aware that Defendants had a supply of pentobarbital, they requested information under the state public records act (PRA). Letter, Baich to Shinn, Mar. 8, 2021 (Ex. 2). The FPD filed a subsequent PRA in July 2021 when the State admitted that it needed to complete "specialized testing" to extend the BUD. Letter, Baich to ADCRR Public Information Officer, Jul. 21, 2021, at 3-4 (Ex. 3). However, Defendants have not produced any information related to the BUD and have not produced any scientific documentation to support extending the BUD.

On February 24, 2022, under DO 710, counsel for Plaintiff requested that Defendants produce a quantitative analysis of the compounded pentobarbital. Email, Sandman to Sparks, Feb. 24, 2022 (Ex. 4). The following day, the FPD filed another PRA request seeking documentation related to the BUD. Letter, Day to ADCRR Public Information Officer, Feb. 25, 2022 (Ex. 5). On March 4, 2022, Defendants produced a heavily redacted single page test result that indicates only that the substance contains pentobarbital. (Ex. 6.) This document does not provide the date of compounding or the BUD.

In response to the very limited information released, on March 4, 2022, counsel for Plaintiff requested additional documents related to the "specialized testing" and the BUD. Email, Bass to Sparks, Mar. 4, 2022 (Ex. 7). On March 15, 2022, Defendants produced

three additional heavily redacted testing documents without identifying what significance the test results had to the drug intended for use in Plaintiff's execution, and which did not provide an assigned BUD. (Ex. 7.) On April 14, 2022, Defendants produced an additional four pages of heavily redacted documents that again provided no BUD and had no connection to the drug intended for Plaintiff's execution. (Ex. 9)

That same day, counsel for Plaintiff again emailed counsel for Defendants and asked for documentation regarding the BUD. Email, Bass to Sparks, Apr. 14, 2022 (Ex. 10). A week later on April 22, 2022, ADCRR's Attorney General Liaison responded by telephone that Defendants anticipated producing documents responsive to the request for BUD information sometime in the next week. Compl. ¶ 55. Over a week later, Defendants still had not produced information regarding the BUD. The underlying complaint was filed on May 3, 2022 (ECF No. 1). That same day, Defendants produced two additional heavily redacted test results that still did not provide the BUD. (Ex. 14).

2. Requirements for Compounded Sterile Injectables

The process of compounding drugs, including sterile injectables, must meet the requirements contained in the United States Pharmacopeia (USP), including the requirement that the compounder must assign a compounded drug a BUD, and the requirement that the date must appear on the label. Compl. ¶¶ 66-73; *see also* Expert Report of Michaela Almgren, PharmD, MA, Mar. 10, 2022 ("Almgren Report") ¶ 9 (Ex. 11). According to the USP, the maximum BUD for compounded sterile injectables, like pentobarbital, is 45 days if the drug is kept in a solid, frozen state. Almgren Report ¶ 10.

In order to extend BUDs beyond those set by the USP, a carefully designed stability study must be performed to assure the drugs maintains integrity and pharmacological properties over time. Supplemental Report of Michaela Almgren, PharmaD, MA, Mar. 31, 2022 ("Almgren Suppl. Report") ¶ 6 (Ex. 12). Stability study design must be specified in a test protocol that applies only to the specific compounding process, formulation or recipe, container closure system, storage condition and batch size. Almgren Suppl. Report ¶ 7. Stability study tests are performed at specific timing intervals, for example, at the

point the drug is compounded and then monthly, to establish an understanding of the drug's degradation process over time. Almgren Suppl. Report ¶ 11. The results of the stability study are applicable only to subsequent batches of drugs *compounded under the exact same specifications* and a new stability study must be performed if any of these factors change between batches. Almgren Suppl. Report ¶ 7.

The process of compounding sterile injectable pentobarbital is a complex and highly specialized process. Almgren Report ¶¶ 26-27. Even minor deviations can impact the safety and efficacy of the drug including insufficient potency. Almgren Report ¶ 28. For these reasons, there is a substantial risk that compounded drugs generally, and pentobarbital specifically, will be contaminated, handled improperly, or suffer from quality issues, the most common and concerning of which is lack of potency.

These risks increase if the drug is used past the assigned BUD. Expired drugs can have unpredictable pharmacological effects due to loss of potency and degradation. Almgren Report ¶ 5. Compounding Pharmacy Expert Michaela Almgren, PharmaD, MA, stated that the use of contaminated, impure, or sub-potent compounded pentobarbital "creates the risk that these drugs will not be sufficiently effective and will not have the necessary pharmacological effect." Almgren Report ¶ 35.

Not only is the BUD and its supporting documentation important in general, but also because that type of documentation must include the storage conditions under which the drugs must be kept. The USP manual's section relating to the compounding of sterile preparations explains:

> When CSPs [compounded sterile preparations] will be distributed to and administered in residential locations other than health care facilities, the effect of potentially uncontrolled and unmonitored temperature conditions must be considered when assigning beyond-use dates. It must be ascertained that CSPs will not be exposed to warm temperatures . . . unless the compounding facility has evidence to justify stability of CSPs during such exposure.

USP <797> Pharmaceutical Compounding-Sterile Preparations (2008), at *Determining Beyond-Use Dates.*

Moreover, because storage temperature is critical, USP <797> requires that the compounding pharmacist ensure that the recipient of the compounded preparation is able to properly store the preparation.

> Compounding facilities that ship CSPs to . . . other recipients outside their own premises must ascertain or provide, whichever is the appropriate case, the following assurances: 1. Labels and accessory labeling for CSPs include clearly readable beyond-use dates, storage instructions, and disposal instructions for out-of-date units. 2. Each . . . recipient is able to store the CSPs properly, including the use of a properly functioning refrigerator and freezer if CSPs are labeled for such storage.

*Id.* at *Storage in Locations Outside CSP Facilities*.

3. Problems indicated by Defendants' limited, redacted drug-related documents

The limited test results produced by Defendants assign no BUD and are inadequate to extend the BUD of a sterile injectable beyond 45 days, because they do not provide the required information needed to determine a drug's expiration date. Almgren Suppl. Report ¶ 5. The fact that the documents do not provide a BUD is incomprehensible. If the drug intended for use in Plaintiff's execution was compounded according to applicable standards, it must have already been assigned a BUD.

Moreover, the limited, redacted test results that Defendants provided lack many basic elements of a typical stability study for compounded sterile injectables, including information about the study design and parameters; the examination of multiple samples from multiple batches; the specific compounding recipe used to prepare the compound; and the timing intervals for the tests. Almgren Suppl. Report ¶¶ 6-11. If the drugs intended for use in Plaintiff's execution have not been properly extended by a scientifically sound stability study, they are already expired and Defendants will be in violation of the execution protocol if those drugs are used to carry out Plaintiff's execution.

Finally, Defendants' limited, redacted information does not contain information detailing the specialized storage conditions required for compounded sterile injectables that have extended BUDs. *See* USP <797> Pharmaceutical Compounding-Sterile Preparations (2008), at *Storage in Locations Outside CSP Facilities*.

4. Plaintiff has specific medical concerns that heighten his need for the BUD information he has requested.

Plaintiff has a specific, medically-based need to ensure the drug used in his execution is safe, effective and potent and in compliance with the DO 710's expiration date requirement. Due to Plaintiff's advanced age and declining health, he is at an increased risk that subpotent or otherwise compromised drugs will increase the chance that he experiences pain and suffering during his execution. This is because his "heart, lungs and liver all show damage that likely will alter the way the [execution] drug is both delivered and metabolized." Declaration of Tara Cuccinelli, Apr. 21, 2022, at 3 (Ex. 13). "His lungs, liver and heart are damaged enough that it might take longer to circulate the medication to reach full toxicity dose leaving him feeling some of the effects of Pentobarbital but not all of them." *Id*. at 3. It is imperative that the drug used to carry out Plaintiff's execution comply with DO 710's prohibition on using expired drugs and that it has been stored and handled properly because an expired drug "may have unpredictable effects such as lower than expected pharmacological activity, formation of precipitate leading to extreme pain and suffering upon administration, formation of degradants with unexpected pharmacological activity, and other potential problems." Almgren Report ¶ 21.

5. Plaintiff's need for scientific data relating to compounded execution drugs is not a unique or theoretical one.

The concerns Plaintiff raises here have been amplified just this week in an execution attempt in another state. On April 21, 2022, the Governor of Tennessee granted Oscar Franklin Smith a temporary reprieve when problems with the preparation of the compounded drugs that were to be used in his execution surfaced hours before he was to be put to death. Mariah Timms et al., *Tennessee execution delayed after oversight in lethal injection preparation*, The Tennessean (Apr. 21, 2022), https://www.tennessean.com/story/news/crime/2022/04/21/tennessee-execution-oscar-franklin-smith-delayed-because-issue-lethal-injection/7403715001/. On May 2, 2022, the

Governor issued a moratorium on all executions for the rest of the year, pending an investigation into the State's failure to conduct the proper analytical testing on the execution drugs. *Tennessee Halts Executions After Failing to Test Lethal Injection Drugs,* The New York Times (May 2, 2022), https://www.nytimes.com/2022/05/02/us/tennessee-executions-lethal-injection.html.

**LEGAL STANDARD**

Plaintiff seeks a temporary restraining order or preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure to prevent the violation of his First and Fourteenth Amendment rights. The purpose of a TRO is to preserve the status quo until the rights of the parties can be fully and fairly litigated. *Los Angeles Mem. Coliseum Comm. v. Nat'l Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980). "The standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction." *Sherrill v. Holder*, No. CV-12-00489-TUC-CKJ, 2013 WL 11316921, at *1 (D. Ariz. June 25, 2013); *see also Whitman v. Hawaiian Tug & Barge Corp./Young Bros., Ltd. Salaried Pension Plan*, 27 F.Supp.2d 1225, 1228 (D. Haw. 1998). To obtain a preliminary injunction, Plaintiff must show that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tip in his favor, and (4) a preliminary injunction is in the public interest. *Winter v. NRDC*, 555 U.S. 7, 20 (2008); *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). For the reasons outlined below, Plaintiff meets the standard for obtaining a TRO and/or preliminary injunction.

**ARGUMENT**

This Court should grant Plaintiff a TRO and/or a preliminary injunction, pending a hearing. First, the Court should find that Plaintiff is likely to succeed on his First Amendment access to governmental proceedings claim, which entitles him to the requested information regarding the BUD of the drug intended for use in his execution. Second, the Court should find he is likely to succeed on the merits of his due process claim

because executing Plaintiff without providing this information violates the Fourteenth Amendment. Finally, Plaintiff satisfies the other factors that warrant preliminary relief.

**A. Plaintiff Is Likely to Succeed on the Merits**

Plaintiff has a strong likelihood of success on the merits of his claim that Defendant's failure to provide him the requested information about the BUD of the drug intended for use in his execution violates the First Amendment. Additionally, he is likely to succeed on the merits of his claim that executing him without providing him this information violates his right to due process under the Fourteenth Amendment to the U.S. Constitution.

1. Plaintiff has a First Amendment right to the information about the BUD of the drug intended for use in his execution.

Plaintiff has a First Amendment right to the information he has diligently requested regarding the assigned BUD, along with supporting scientific data, of the drug intended for use in his May 11, 2022 execution. Indeed, this Court has already determined that prisoners have a First Amendment right to information related to the expiration date of execution drugs. *See* Order, *Schad v. Brewer*, 2:13-cv-02001-ROS (D. Ariz. Oct. 7, 2013) ("*Schad* Order").

"It is well-settled that the First Amendment guarantees the public—and the press—a qualified right of access to governmental proceedings." *Cal. First Amendment Coal. V. Woodford*, 299 F.3d 868, 873-74 (9th Cir. 2002) (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 579 (1980). This right "is premised on the common understanding that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs." *Id.* at 874 (quoting *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 604 (1982)) The First Amendment right of access to governmental proceedings extends to the execution context—that is, there exists the right of access to information "about how the State and its justice system implement the most serious punishment a state can exact from a criminal defendant—the penalty of death." *Id.* at 873; *see also id*. at 875

(noting that "the public has a First Amendment right of access to governmental proceedings in general and executions [ ] in particular . . .").

Plaintiff is a member of the public and as "[a] prisoner [he] 'retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system.'" *Schad* Order at 6 n.1 (citing *Pell v. Procunier*, 417 U.S. 817, 822 (1974)). As an individual citizen, Plaintiff has the right to "'effectively participate in and contribute to our republican system of self-government.'" *Cal. First Amendment Coal.*, 299 F.3d at 874 (quoting *Globe Newspaper*, 457 U.S. at 604-05).

Plaintiff has a legitimate reason to believe that the drug intended for use in his execution will be expired. *See supra*; *see also* Motion to Modify Briefing Schedule at 3 (explaining that unless the specialized testing extended the BUD beyond 45 days, "the pentobarbital will expire prior to [Plaintiff]'s anticipated execution"). Without the requested information, Plaintiff has no way to verify whether his "lethal injection execution [will be] fairly and humanely administered" in accordance with Defendants' execution protocol. *Cal. First Amendment Coal.*, 299 F.3d at 876. Accordingly, Plaintiff seeks "reliable information about the initial procedures" of the process—the manner in which the drugs are assigned a BUD, which if not based on valid scientific process "may give rise to serious complications." *Id.* (internal quotation marks omitted).

Accordingly, Plaintiff has requested non-confidential information about government proceedings—information Defendants have already conceded he is entitled to (*see* Compl. ¶ 55) —in order to determine whether Defendants will carry out his execution in a manner that comports with Defendants' execution procedures, and in order to participate in the public discourse about executions. *See Cal. First Amendment Coal.*, 299 F.3d at 876 ("An informed public debate is critical in determining whether execution by lethal injection comports with 'the evolving standards of decency which mark the progress of a maturing society.'" (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958))).

Moreover, Plaintiff has asked for the *identical type* of information that Defendants have provided in the past in response to public-records proceedings, in response to discovery requests by other death-row prisoners (Comp. ¶¶ 59-61), and in response to an order of this Court. Notice of Disclosure, *Schad v. Brewer*, 2:13-cv-02001-ROS (D. Ariz. Oct. 7, 2013), ECF 24; *see also* Order, *Schad v. Brewer*, 2:13-cv-02001-ROS (D. Ariz. Oct. 7, 2013), ECF 23.

In *Schad v. Brewer*, this Court ordered Defendants to produce information about Defendants' supply of pentobarbital, including the expiration date. *Schad* Order at 16. The Court determined that Schad, as a member of the public, was entitled to "reliable information about the lethal-injection drugs themselves in order to judge the propriety of the particular means used to carry out an execution." *Id*. at 8. This Court found that the historic tradition of public access to information about the means of executions and the importance of public access to this information created a right of access to the specific information about the drugs. *Id.* Like the plaintiffs in *Schad*, Plaintiff here has a First Amendment right of access to information about the expiration date, or BUD of the drug, which is "inextricably intertwined with the process of putting [him] to death." *Cal. First Amendment Coal.*, 299 F.3d at 877.

Finally, as in *Schad*, Defendants cannot demonstrate that their "refusal to provide the information 'is reasonably related to legitimate penological objectives, or whether it represents an exaggerated response to those concerns.'" *See Schad* Order at 8 (quoting *Cal. First Amendment Coal.*, 299 F.3d at 878). To the contrary, Defendants have not provided any reason for refusing to provide the requested information and have, in fact, represented that the information would be provided to Plaintiff.

2. Defendants' failure to demonstrate that the BUD of the compounded drug intended for use in Plaintiff's execution will not expire before his execution violates Plaintiff's right to due process.

Department Order 710, Attachment D, mandates that "ADC will only use chemicals in an execution that have an expiration or beyond-use date that is after the date that an execution is carried out." DO 710, Attachment D at A.1.III.

On June 22, 2021, however, the State advised Plaintiff and the Arizona Supreme Court, *after* initiating warrant proceedings, that "until certain specialized testing of a sample batch is conducted, pentobarbital that is compounded for Plaintiff's execution will have an initial beyond-use date of 45 days" and "will expire prior to Plaintiff's anticipated execution." Motion to Modify Briefing Schedule at 2-3, *State v. Dixon*, No. CR-08-0025-AP (Ariz. June 22, 2021).

Since then, the State has presented no evidence to Plaintiff to support its claim that "certain specialized testing" establishes that "the pentobarbital to be used in Plaintiff's execution will have a beyond-use date of at least 90 days." Motion to Set Briefing Schedule for Motion for Warrant of Execution at 2, *State v. Dixon*, No. CR-08-0025-AP (Ariz. Jan. 5, 2022). If the BUD has not been properly extended, it will have expired prior to the day of his May 11, 2022, scheduled execution.

a. *The State's failure to provide information to Plaintiff demonstrating that its compounded drug will not be expired by the time it is used in Plaintiff's execution renders it in violation of Department Order 710 and, consequently, Plaintiff's federal Due Process rights, including the due process right to be heard.*

The Fourteenth Amendment prohibits a state from depriving "any person of life, liberty, or property, without due process of law." U.S. Const. amend XIV. This due-process right, "the touchstone" of which "is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), requires "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

The evaluation of a due-process claim involves an analysis of three factors: "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative

burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

Here, the State's departure from its execution protocol by failing to demonstrate that its compounded drugs will not be expired by the time they are to be used in Plaintiff's execution violates his federal due process guarantees.

*b. Plaintiff meets the factors necessary to demonstrate that he has a due process and First Amendment right to participate in the public discussion leading to his execution.*

For Plaintiff to vindicate his First Amendment right to "participate in and contribute to our republican system of self-government,'" *Calif. First Amend. Coal*, 299 F.3d at 874 (quoting *Globe Newspaper*, 457 U.S. at 604-05), he must have the information relevant to public discussion. That information includes "a First Amendment right of access to specific information about the drugs that are 'inextricably intertwined with the process of putting the condemned inmate to death.'" *Schad v. Brewer*, No. CV-13-2001-PHX-ROS (D. Ariz. Oct. 7, 2013) (quoting *Calif. First Amend. Coal.*, 299 F.3d at 876). Accordingly, he has asked the State to provide him that information; the State has declined to do so.

Plaintiff has a due process right to this information. First, he has a "private interest[,]" *Mathews*, 424 U.S. at 335, in participating in the public discussion related to his execution. Second, "the risk of an erroneous deprivation" of his First Amendment rights is high: if he is executed without being able to exercise those rights, he has no further recourse. There is nothing more final and irreversible than death, "The penalty of death differs from all other forms of criminal punishment, not in degree but in kind. It is unique in its total irrevocability." *Furman v. Georgia*, 408 U.S. 238, 306 (1972) (Stewart, J. concurring). Third, the administrative and financial burden on the State's interest is low, because the State has already committed to providing much of the information. Compl. ¶ 55.

*c. Executing Plaintiff absent evidence demonstrating that the compounded drug's beyond-use date has been reliably extended beyond 45 days and will not be expired by the time they are used to execute Plaintiff implicates Plaintiff's protected liberty interest.*

"[W]hen a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution–and, in particular, in accord with the Due Process Clause." *Evitts v. Lucey*, 469 U.S. 387, 401(U.S. 1985). Moreover, when the State "create[s]" a right for prisoners, "the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment 'liberty' to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated." *McDonnell*, 418 U.S. at 557.

ADCRR has written an execution protocol averring the State will not use execution drugs that reach a beyond-use date before the execution for which they are intended. Thus far, Defendants have provided no evidence that its execution drugs meet the requirements of the protocol that they not be expired. Nor have they provided evidence that they will be able to maintain the drugs in the specialized storage conditions required for these pharmacologically fragile drugs. *Compare, e.g.*, USP <797> Pharmaceutical Compounding-Sterile Preparations (2008), at "Storage in Locations Outside CSP Facilities" (the pharmacist must ensure that *inter alia*, "Each . . . recipient is able to store the CSPs properly, including the use of a properly functioning refrigerator and freezer if CSPs are labeled for such storage.") *with* DO 710, Attach. D at A.1.IV ("Ensure the chemicals are ordered, arrive as scheduled and are properly stored. The chemicals shall be stored in a secured, locked area that is temperature regulated and monitored to ensure compliance with manufacturer specifications . . . .").

If the State acts in contravention of its own execution protocol, the State will arbitrarily deprive Plaintiff of an entitlement, which by virtue of its execution protocol, it has opted to afford him. *See Lucey*, 469 U.S. at 401; *McDonnell*, 418 U.S. at 557.

**B. Plaintiff meets the other factors for obtaining a TRO and/or a Preliminary Injunction.**

For the reasons stated below, Plaintiff meets the other factors for obtaining a TRO or a preliminary injunction.

1. Plaintiff Will Suffer Irreparable Harm If an Injunction Is Not Granted

As a matter of law, Plaintiff will suffer irreparable harm if a TRO and/or preliminary injunction is not granted. As described above, Plaintiff has raised colorable claims of threatened constitutional violations of his First and Fourteenth Amendment rights under the United States Constitution. The Ninth Circuit has made clear that "[a]n alleged constitutional infringement will often alone constitute irreparable harm." *Goldie's Bookstore Inc. v. Super. Ct. of Calif.*, 739 F.2d 466, 472 (9th Cir. 1984); *see also, e.g.*, *Warsoldier v. Woodford*, 418 F.3d 989, 1001-1002 (9th Cir. 2005) ("'When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.'") (*citing* 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)).

Plaintiff will also suffer irreparable harm as a matter of fact. Plaintiff is scheduled to be executed on May 11, 2022. If he is executed without intervention of this Court, he will be deprived of his First Amendment "right to be informed about how the State" intends to execute him, *Cal. First Amendment Coal.*, 299 F.3d at 873, and his rights to due process and access to the courts. Without this Court's issuance of a preliminary injunction and/or TRO, Defendants will be permitted to go forward with Plaintiff's execution in violation of the First and Fourteenth Amendments.

Irreparable harm exists where there is no adequate legal remedy to cure the harm. *See Arizona Recovery Housing Ass'n v. Ariz. Dep't of Health Svcs*, 462 F. Supp. 3d 990, 997 (D. Ariz. 2020). Here, the harm is irreparable: no other remedy is currently available to Plaintiff and no remedy will be available to him once he is dead.

Moreover, Plaintiff does not seek damages to remedy the harm. No monetary remedy can compensate him for the violation of his First and Fourteenth Amendment

rights. *See id.* If Plaintiff is executed without intervention by this Court, he will have no recourse for these violations. This factor weighs in favor of an injunction.

2. The Balance of Equities and Public Interest Support a Preliminary Injunction

The third and fourth preliminary injunction factors, the balance of the equities and public interest factors, also weigh in Plaintiff's favor and are properly considered together here. "When the government is a party, these last two factors merge." *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) Here, the public interest would be served through the grant of preliminary relief because "all citizens have a stake in upholding the Constitution" and have "concerns [that] are implicated when a constitutional right has been violated." *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). "It is always in the public interest to prevent the violation of a party's constitutional rights." *Calif. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 482 (9th Cir. 2022) (alterations and internal quotation marks omitted). Moreover, there is no public interest that would be injured by the granting of preliminary relief. *Alliance for the Wild Rockies*, 632 F.3d at 1138 (considering "whether there exists some critical public interest that would be injured by the grant of preliminary relief" (internal quotation marks and citation omitted)). Therefore, the public interest favors granting the requested relief.

Similarly, the balance of equities tip in Plaintiff's favor. Plaintiff has not delayed in seeking redress for the violations of his rights. As described more thoroughly in the complaint, counsel for Plaintiff have been requesting information about Defendants' supply of pentobarbital since March 2021. *See* Compl. ¶¶ 44-53. Most recently, on April 14, 2014, counsel for Plaintiffs specifically requested documentation demonstrating the BUD assigned to the drug intended for use in Plaintiff's execution. On April 22, 2022, ADCRR responded that it anticipated providing that information to Plaintiff sometime in the next week. ADCRR did not produce any information during the following week (*but see supra*, n.3), and Plaintiff expeditiously filed the underlying complaint and this motion. He did not delay.

## CONCLUSION

Because Plaintiff can demonstrate a likelihood of success on the merits of his claims, and because the other factors tip in his favor, this Court should grant a TRO and/or preliminary injunction to prevent Defendants' ongoing violation of his Constitutional rights.

Respectfully submitted this 4th day of May 2022.

Jon M. Sands
Federal Public Defender
District of Arizona

Jennifer M. Moreno
Therese M. Day
Amanda C. Bass
Assistant Federal Public Defenders

s/ Jennifer M. Moreno
Counsel for Plaintiff

**Certificate of Service**

I hereby certify that on May 4, 2022, I electronically filed the foregoing Emergency Motion for Temporary Restraining Order of Preliminary Injunction and Memorandum in Support with the Clerk's Office using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Kat Esparza
Assistant Paralegal
Capital Habeas Unit

***Dixon v. Arizona Department of Corrections, Rehabilitation & Reentry, et al.,***

CASE NO:CV−22−00743−PHX−DJH (JFM)

**Exhibits to Emergency Motion for Temporary Restraining Order or Preliminary Injunction and Memorandum in Support**

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| | |
|---|---|
| Exhibit 1 | Arizona Department of Corrections, Rehabilitation and Reentry Department Order Manual |
| Exhibit 2 | Letter to David Shinn, Director, Arizona Department of Corrections Rehabilitation and Reentry, March 3, 2021. |
| Exhibit 3 | Letter to Public Information Officer, Arizona Department of Corrections Rehabilitation and Reentry, July 21, 2021. |
| Exhibit 4 | Email to Jeffrey Sparks, Acting Chief Counsel, Office of the Attorney General re Quantitative Analysis, February 24, 2022 |
| Exhibit 5 | Letter to Public Information Officer, Arizona Department of Corrections Rehabilitation and Reentry, February 25, 2022. |
| Exhibit 6 | Email from Jeffrey Sparks, Acting Chief Counsel, Office of the Attorney General re Drug Testing Report, March 2, 2022 |
| Exhibit 7 | Email to Jeffrey Sparks, Acting Chief Counsel, Office of the Attorney General Requesting Additional Information on Drug Testing, March 4, 2022 |
| Exhibit 8 | Email from Jeffrey Sparks, Acting Chief Counsel, Office of the Attorney General re: Testing Documents, March 15, 2022 |
| Exhibit 9 | Email from Jeffrey Sparks, Acting Chief Counsel, Office of the Attorney General re Arizona Department of Corrections Rehabilitation and Reentry Documents Received, April 14, 2022 |
| Exhibit 10 | Email to Jeffrey Sparks, Acting Chief Counsel, Office of the Attorney General Requesting Additional Information on Drug Testing, April 14, 2022 |
| Exhibit 11 | Expert Report of Dr. Michaela Almgren, March 10, 2022 |
| Exhibit 12 | Supplemental Expert Report of Dr. Michaela Almgren, March 31, 2022 |
| Exhibit 13 | Declaration of Tara Cuccinelli, April 21, 2022 |
| Exhibit 14 | Drug Toxicology Reports, received May, 03, 2022 |

# EXHIBIT 1

**CHAPTER: 700**

**Operational Security**

**DEPARTMENT ORDER:**

**710 – Execution Procedures**

**OFFICE OF PRIMARY RESPONSIBILITY:**

**OPS**

# Arizona Department of Corrections Rehabilitation and Reentry

**Effective Date:**

**June 13, 2017**

**Amendment:**

**April 20, 2022**

**Supersedes:**

**DO 710 (5/30/17)**

**Scheduled Review Date:**

**N/A**

**ACCESS**

☐ **Contains Restricted Section(s)**

## Department Order Manual

David Shinn, Director

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## PURPOSE

This Department Order establishes procedures for planning and carrying out the execution of a person convicted of a capital offense and sentenced to death. These procedures shall be followed as written, except that the Director of the Arizona Department of Corrections, Rehabilitation and Reentry (Director) is allowed to make limited deviations from or adjustments to these procedures when required to address certain unexpected or otherwise unforeseen contingencies, subject to the limitations on the Director's discretion as set forth herein. Except as expressly permitted herein, the Director shall not have any authority to deviate from or make adjustments to any material aspects of the execution process, including, but not limited to, the execution chemicals or dosages, consciousness checks, the access of the press and the inmate's counsel to the execution, and the timeframes established by this Department Order.

## RESPONSIBILITY

The Department ensures the execution of a person sentenced to death under State law by a court of competent authority and jurisdiction is carried out in keeping with statute, case law and professional practices.

The Department shall make every effort in the planning and preparation of an execution to ensure the execution process:

- Faithfully adheres to constitutional mandates against cruel and unusual punishment.
- Is handled in a manner that minimizes its impact on the safety, security and operational integrity of the prison and the community in which it occurs.
- Accommodates the public's right to obtain certain information concerning the execution.
- Reasonably addresses the privacy interests of persons as provided by law.
- Provides contingency planning to identify and address unforeseen problems.
- Allows for stays of execution, commutations and other exigencies up to the time that the sentence is imposed.
- Provides opportunity for citizens to exercise their First Amendment rights to demonstrate for or against capital punishment in a lawful manner.
- Ensures there is an appropriate response to unlawful civil disobedience, trespass and other violations of the law by any person attempting to interfere with the execution or the operation of the prison.

The Department shall detain, seek the arrest and encourage prosecution of persons whose conduct includes:

- Violating prohibitions against filming, taping, broadcasting or otherwise electronically documenting the execution of the inmate.
- Trespassing and otherwise entering upon Department property without authorization.
- Participating in unlawful demonstrations or unlawfully attempting to disrupt, prevent and otherwise interfere with the execution.
- Unlawfully threatening, intimidating and otherwise attempting to influence authorized persons involved in the execution process.
- These prohibitions apply to the inmate population as well as department personnel and members of the general public engaging or attempting to engage in disruptive and other prohibited behaviors.

Participating staff shall adhere to the Department's Code of Ethics and Guided Principles, evidencing:

- Appropriate levels of professionalism, restraint and courtesy when interacting with witnesses, demonstrators, attorneys, news media, state and local law enforcement and any other member of the public directly and indirectly involved with the imposition of the sentence of death.
- All assigned duties are performed proficiently and professionally.
- Their ability to exercise the option to withdraw from the process by the prescribed means at any time.
- Conduct that appropriately reflects the solemnity of the activities in which they elect to engage and the duties they choose to perform.
- Reserving public comment on any and all facets of the execution except as expressly provided in Department Order #201, Legal Services - Records Release.
- Any Department employee who learns of identifying information regarding any person who participates in or performs any function of an execution must keep that information confidential.

**IMPORTANT GUIDELINES REGARDING CONFIDENTIALITY AND VOLUNTARINESS OF PARTICIPATION IN AN EXECUTION:**

- The anonymity of any person, as defined in A.R.S. §1-215(28) and A.R.S. §13-105(30), who participates in or performs any ancillary function(s) in the execution, including the source of the execution chemicals, and any information contained in records that would identify those persons are, as required by statute, to remain confidential and are not subject to disclosure. A.R.S. §13-757(C).
- All team members serve on a strictly voluntary basis. At any point before, during or after an execution any team member may decline to participate or participate further without additional notice and explanation or repercussion.
- The Assistant Director for Prison Operations shall ensure all team members understand and comply with the provisions contained herein.

## PROCEDURES

### 1.0 DIRECTOR'S OFFICE RESPONSIBILITIES UPON NOTICE THAT THE STATE HAS FILED A MOTION FOR WARRANT OF EXECUTION

1.1 Upon notice from the Attorney General's Office that it has filed a Motion for Warrant of Execution in the Arizona Supreme Court:

1.1.1 General Counsel shall:

1.1.1.1 Notify the Director, Assistant Director for Prison Operations, the Wardens of ASPC-Florence and ASPC-Eyman or ASPC-Perryville, and the Media Relations Director.

1.1.1.2 Notify the Victim Services Team Leader, who shall contact the victim(s) and inform them that the State is seeking a Warrant of Execution.

1.1.2 The Director shall notify the inmate and the inmate's counsel in writing of the drug/lethal gas protocol that will be used in the event a Warrant of Execution is issued and the method of execution.

### 2.0 COMPLEX AND DIRECTOR'S OFFICE RESPONSIBILITIES UPON RECEIPT OF WARRANT OF EXECUTION

2.1 Upon receipt of the Warrant of Execution from the Attorney General's Office:

2.1.1 General Counsel shall:

2.1.1.1 Notify the Director, Assistant Director for Prison Operations, the Wardens of ASPC-Florence and ASPC-Eyman or ASPC-Perryville, and the Media Relations Office.

2.1.1.2 Forward the original Warrant of Execution to the Warden of ASPC-Florence.

2.1.1.3 Forward copies of the original Warrant of Execution to the Warden of ASPC-Eyman or ASPC-Perryville.

2.1.1.4 Notify the Victim Services Team Leader, who shall contact the victim(s) and inform them of the court's issuance of the Warrant of Execution.

2.1.2 The Director shall:

2.1.2.1 Select the time of execution and provide notice to the Arizona Supreme Court and the parties at least 20 calendar days prior to the execution date. (Arizona Rules of Criminal Procedures, Rule 31.17(c)(3))

2.1.2.2 Notify the inmate that if the offense was committed prior to November 23, 1992, the inmate shall choose in writing using the Method of Execution, Form 710-1, either lethal injection or lethal gas at least twenty-one days prior to the execution. If the inmate fails to choose either lethal injection or lethal gas, the penalty of death shall be inflicted by lethal injection (A.R.S. §13-757(B)).

2.1.2.3 Have the authority to change the timeframes established in this Department Order in order to address certain unexpected or otherwise unforeseen contingencies only with regard to minor or routine contingencies not central to the execution process.

2.1.3 The ASPC-Eyman or ASPC-Perryville Warden shall:

2.1.3.1 Direct the inmate to submit the Inmate Witness and Notification Information, Form 710-2, to the Warden no later than 14 days prior to the scheduled execution date.

2.1.3.1.1 Inform the inmate that two clergy and five other persons may be invited to be present at the execution. The inmate may designate one clergy/spiritual advisor to accompany the inmate into the lethal injection execution chamber for audible prayer and religious touch, consistent with the U.S. Supreme Court's Opinion in *Ramirez v. Collier* (March 24, 2022), and the Department reserves the right to enforce as necessary any or all reasonable restrictions on the audible prayer and religious touch as set forth in the U.S. Supreme Court's Opinion. ***[Revision – April 20, 2022]***

2.1.3.1.2 Notify the inmate that minors are prohibited from witnessing the execution pursuant to A.R.S. §13-758.

2.1.3.1.3 Notify the inmate that requests for Department or contract staff to attend the execution shall be denied.

2.1.3.1.4 Notify the inmate that requests for other inmates to attend the execution shall be denied.

2.1.3.2 Direct the inmate to review and update as necessary the Notification in Case of Accident, Serious Illness or Death and Disposition of Property, Form 711-1. The Warden shall direct the inmate to provide any changes no later than 14 days prior to the execution. If the inmate provides no instruction, the property and accounts shall be disposed in accordance with Department Order #711, Notification of Inmate Hospitalization or Death.

2.1.3.3 Advise the inmate that his/her body shall not be used for organ donation.

2.1.3.4 Summarize the options available with the inmate for release and disposition of their body after the autopsy is performed. The Warden shall direct the inmate to review the previously completed Disposition of Remains, Form 710-3, and update as necessary no later than 14 days prior to the execution. If the inmate provides no information or the information is insufficient or incorrect the deceased shall be disposed in accordance with Department Order #711, Notification of Inmate Hospitalization or Death.

2.1.3.5 Advise the inmate he may request a last meal by completing the Last Meal Request, Form 710-5, and returning it no later than 14 days prior to the execution. Reasonable effort shall be made to accommodate the request.

## 3.0 EXECUTION TEAM MEMBERS

3.1 The Assistant Director for Prison Operations shall:

3.1.1 Establish a training schedule and identify dates for periodic on-site practice by the Housing Unit 9 Section Teams, to include 10 training scenarios within the 12 months preceding the scheduled execution.

3.1.2 Conduct a minimum of two training sessions with multiple scenarios 2 days prior to the scheduled execution. The IV Team members shall participate in at least one training session with multiple scenarios within one day prior to the scheduled execution.

3.1.2.1 All training sessions shall be documented and be included as part of a permanent record created by the ASPC-Florence Warden to be submitted to the Department's General Counsel for archive, post execution.

3.1.3 Ensure periodic testing of all of the equipment in Housing Unit 9 occurs, affirming electrical, plumbing, heating and air conditioning units are in working order and the gas chamber is maintained.

3.2 The Assistant Director for Prison Operations provides for the planning and overall direction of all pre-execution, execution and post-execution activities. The Assistant Director coordinates the activities of the Southern and Northern Regional Operations Directors (SROD and NROD) and the ASPC-Eyman or ASPC-Perryville and ASPC-Florence Wardens who activate the following teams and oversee their activities, specifically:

3.2.1 Command

3.2.1.1 Consists of a minimum of three team members:

3.2.1.1.1 Commander

3.2.1.1.2 Recorder

3.2.1.1.3 Telephone operator

3.2.1.1.4 Others as necessary

3.2.1.2 Team members are selected by the Assistant Director for Prison Operations with the documented approval of the Director.

3.2.1.3 Its team leader is selected by the Assistant Director for Prison Operations.

3.2.1.4 Primary function of Command is the overall coordination of execution procedures.

3.2.2 Housing Unit 9 Section

3.2.2.1 Consists of a section leader and two teams:

3.2.2.1.1 Restraint Team

3.2.2.1.2 Special Operations Team

3.2.2.2 Team leaders are selected by the Assistant Director for Prison Operations with the documented approval of the Director.

3.2.2.3 The section leader is the ASPC-Florence Warden.

3.2.2.4 Primary function of the section leader is the overall coordination of activities of the Restraint Team and the Special Operations Team to ensure compliance with conditions of confinement and application of approved procedures.

3.2.3 Restraint Team

3.2.3.1 Consists of a minimum of seven team members, including one team leader.

3.2.3.2 Restraint Team members and the team leader are selected by the Assistant Director for Prison Operations with the documented approval of the Director.

3.2.3.3 Primary function of the Restraint Team is to provide continuous observation of the inmate on the day of the execution and apply appropriate restraint procedures and inmate management prior to, during and after the execution.

3.2.4 Special Operations Team

3.2.4.1 Consists of a minimum of five team members:

3.2.4.1.1 Team Leader

3.2.4.1.2 Recorder

3.2.4.1.3 Three additional team members

3.2.4.2 Its team members and team leader are selected by the Assistant Director for Prison Operations with the documented approval of the Director.

3.2.4.3 The Special Operations Team Leader shall designate functions of the other team members, including the selection of a member to observe the procedure and serve as the Recorder.

3.2.4.4 Primary function of the Special Operations Team is to implement the protocols associated with the execution with its primary duty being the administration of the chemicals, and additionally mixing the chemicals under the direct supervision of the IV Team Leader.

3.2.5 Intravenous Team Members (IV Team)

3.2.5.1 The IV Team will consist of any two or more of the following: physician(s), physician assistant(s), nurse(s), emergency medical technician(s) (EMTs), paramedic(s), military corpsman or other certified or licensed personnel including those trained in the United States Military. All team members shall be currently certified or licensed within the United States to place IV lines.

3.2.5.2 The IV Team members shall be selected by the Director. Selection of any team member shall include a review of the proposed team member's qualifications, training, experience, and/or any professional license(s) and certification(s) they may hold. Licensing and criminal history reviews shall be conducted, by the Inspector General's Office prior to assigning or retaining any IV Team member and upon the issuance of a Warrant of Execution.

3.2.5.3 The Director shall designate the IV Team Leader. The Assistant Director for Prison Operations shall ensure all team members thoroughly understand all provisions contained herein as written and by practice.

3.2.5.4 The IV Team shall be responsible for inserting either peripheral IV catheters or a central femoral line as determined by the Director acting upon the recommendation of the IV Team Leader. The IV Team Leader shall ensure all lines are functioning properly throughout the procedure, supervise the Special Operations team in the mixing of the chemicals, preparing the syringes, and monitoring the inmate (including the level of consciousness and establishing the time of death). The IV Team Leader shall supervise the administration of the chemicals. A central femoral venous line shall not be used unless the person placing the line is currently qualified by experience, training, certification or licensure within the United States to place a central femoral line.

3.2.5.5 IV Team members shall only be required to participate in the training sessions scheduled for one day prior to the actual execution.

3.2.5.6 Documentation of IV Team members' qualifications, including training of the team members, shall be maintained by the Department Director or his designee.

3.2.6 Maintenance Response Team (MRT)

3.2.6.1 Consists of three team members and a team leader, and reports to Command.

3.2.6.2 Team members are selected by the ASPC-Florence Warden.

3.2.6.3 Primary function of MRT is to test all Housing Unit 9 equipment utilized to impose the sentence of death and to ensure electrical, plumbing, heating and air conditioning units are in working order.

3.2.7 Critical Incident Response Team (CIRT)

3.2.7.1 Consists of three team members and a team leader, and reports to Command.

3.2.7.2 The leader is the Employee Relations Administrator or designee.

3.2.7.3 Team members are CIRT responders and selected by the Employee Relations Administrator.

3.2.7.4 Primary function of CIRT is to educate staff regarding possible psychological responses and effective coping mechanisms to affected staff at all levels in the Department prior to, during and after the execution. CIRT shall provide ongoing follow up contact to staff.

3.2.8 Traffic Control Team

3.2.8.1 Consists of eight team members and a team leader, and reports to Command.

3.2.8.2 Team members and the team leader are selected by the Assistant Director for Prison Operations.

3.2.8.3 Primary function is to confer with state and local law enforcement agencies, establish check points and parameters for traffic control and formulate inter-agency emergency response strategies. The team also coordinates the ingress/egress for Department and contract staff and other persons whose attendance is necessary at ASPC-Eyman or ASPC-Perryville and ASPC-Florence. The Team's focus is the period of time starting twenty-four hours prior to the execution and concluding when normal activities resume after the execution.

3.2.9 Escort Team

3.2.9.1 Consists of eight team members and a team leader, and reports to Command.

3.2.9.2 Team members and the team leader are selected by the Assistant Director for Prison Operations.

3.2.9.3 Primary function is to coordinate the movement of all pre-approved witnesses on and off prison grounds and within its perimeter. One Escort Team is assigned to escort and assist pre-approved official, victim, media, and inmate witnesses. Escort team members always remain with witnesses within the established perimeter.

3.2.10 Victim Services Team

3.2.10.1 Consists of two team members and reports to the Escort Team leader.

3.2.10.2 The team leader is the Victim Services Office Administrator.

3.2.10.3 Primary function is to ensure victims of the crime that resulted in the imposition of death are informed of the execution date and their opportunity to witness the execution. The team explains the execution process. If the victim is interested in attending, the team submits the victim's name(s) for consideration.

3.2.10.4 Day of the Execution – The team leader meets with the victim(s) in a predetermined staging area and accompanies them throughout the process, including a briefing by the Director or the Director's designee. The Team provides support and advocacy as appropriate.

3.2.10.5 If the victim(s) is interested in speaking with the media after the execution, the victim(s) is escorted to the Press Room for brief media availability.

3.2.10.6 Post-Execution - The team leader ensures the victim(s) receives follow up phone calls and support.

3.2.11 Population Assessment

3.2.11.1 Regional Operations Director:

3.2.11.1.1 Is responsible for the coordination of monitoring and evaluation of inmate activity at ASPC-Eyman and ASPC-Florence.

3.2.11.1.2 Continuously monitors and assesses the inmate population for any activity related to the execution or its impact on the prison's operation at ASPC-Eyman and ASPC-Florence.

3.2.11.2 ASPC-Perryville Warden:

3.2.11.2.1 Is responsible for the coordination of monitoring and evaluation of inmate activity at ASPC-Perryville.

3.2.11.2.2 Continuously monitors and assesses the inmate population for any activity related to the execution or its impact on the prison's operation.

3.3 Designation of ADC Staff and Others Selected to Assist with the Execution

3.3.1 The ASPC-Eyman or ASPC-Perryville and ASPC-Florence Wardens shall review the current teams' rosters and recommend retention and replacement of staff and alternates to the Assistant Director for Prison Operations.

3.3.2 The Assistant Director for Prison Operations shall evaluate the teams' composition and the Wardens' recommendations and forward final recommendations to the Director.

3.3.3 In the selection and retention of section leaders and Housing Unit 9 team members, the Assistant Director for Prison Operations shall consider:

3.3.3.1 No employee who was suspended or demoted in the past 12 months shall be considered. Any staff currently under investigation is also ineligible.

3.3.3.2 Special consideration may be given to staff with pertinent specialized training and qualifications.

3.3.3.3 Staff with less than two years employment with the Department shall not be considered.

3.3.3.4 No staff serving on any team shall be related to the inmate by blood or marriage or have any other legal relationship with the inmate, their family or the crime victim(s).

3.3.4 Staff participation in the execution process is strictly voluntary. No Department employee is required to attend or participate in an execution. Any staff volunteers may withdraw from performing their assigned duties specific to the execution at any time by advising their Team Leader, advising a Team Member or advising their immediate chain of command. All staff participating in the execution shall be required to sign a Notice of Execution Involvement, Form 710-8.

## 4.0 COMMUTATION HEARING PROCEEDINGS

4.1 The Arizona Board of Executive Clemency (ABOEC) shall advise the Department of its plans to convene a Commutation Hearing and its date and time. Upon receipt of the notice, the ASPC-Eyman or ASPC-Perryville Warden shall arrange for a location in which the Commutation Hearing will be held.

4.1.1 If the ABOEC Commutation Hearing is held at the prison, the Department shall:

4.1.1.1 Require those in attendance to adhere to dress code as outlined in Department Order #911, Inmate Visitation.

4.1.1.2 Comply with the open meeting laws as it applies to Board of Executive Clemency hearings pursuant to A.R.S. §38-431.08.

## 5.0 DESIGNATION OF WITNESSES BY DIRECTOR

5.1 The Director or designee shall be present during the execution.

5.1.1 The Director shall invite:

5.1.1.1 The Arizona Attorney General. A.R.S. §13-758.

5.1.1.2 Twelve or more reputable citizens, including up to five Arizona-market media.

5.1.1.3 The five official media witnesses selected as representatives, from media-print, television/cable, radio, and the local market where the crime occurred. These official media witnesses shall also agree to serve as pool reporters.

5.1.1.4 Law Enforcement and prosecutors from the jurisdiction where the crime occurred.

5.1.1.5 Any crime victims and survivors of the crime for which the sentence of death will be imposed, once the Victim Services Team identifies those persons and provides to the Director a list of victim witnesses within 14 days prior to the scheduled execution.

5.1.1.6 In the event that the inmate wishes to designate one or more of their attorneys or other members of their legal team (not to exceed a cumulative three persons) to witness the execution, then the inmate shall identify these witnesses twenty-one days prior to the execution, and these witnesses shall sign and timely submit an Official Witness Agreement (Form 710-6), whereupon the Director shall invite these witnesses to attend the execution in accordance with section 10, subsection 10.2.1.1 of this Department Order.

5.1.2 Minors shall not be permitted to witness an execution. A.R.S. §13-758.

5.1.3 All witnesses are subject to a records check. Selection to participate is contingent upon security clearance and Witness Agreement to adhere to the provisions stipulated in the Official Witness Agreement and Official Witness/Pool Reporters Agreements, Forms 710-6 and 710-7. The Director shall retain full discretion as to the selection of and any changes in the witnesses selected for each scheduled execution.

## 6.0 STATE AND LOCAL LAW ENFORCEMENT BRIEFING; SITE CHECKS

6.1 The Assistant Director for Prison Operations shall ensure state and local law enforcement is periodically briefed and adequately prepared for the execution.

6.2 All of the equipment necessary to the administration of the execution shall be available on site and in good working order including:

6.2.1 Transportation vehicles

6.2.2 Communication devices with inter-operability capability and restricted frequencies

6.2.3 Climate control

6.2.4 Tool control

6.2.5 Safety equipment

6.2.6 Audio/visual equipment

6.2.7 Utility infrastructure

6.2.8 Key control/locking devices

6.2.9 Medical emergency response capability

6.3 The Assistant Director for Prison Operations shall take all necessary steps to timely rectify deficiencies.

## 7.0 THIRTY-FIVE DAYS PRIOR TO THE DAY OF EXECUTION – COMPLEX

7.1 The Warden or designee of ASPC-Eyman or ASPC-Perryville shall confirm in writing the following steps were completed:

7.1.1 Read the Warrant to the inmate.

7.1.2 Outline for the inmate how conditions of confinement will be modified over the next thirty-five days and briefly describe the relevant aspects of the execution process.

7.1.3 Offer the inmate the opportunity to contact their Attorney of Record by phone and to speak with a facility chaplain.

7.1.4 Obtain the inmate's current weight and provide that information to the Assistant Director for Prison Operations and the Housing Unit 9 Section Leader.

7.1.5 Transfer the inmate to the single-person cell on Death Row Browning or the Lumley Unit that has been retrofitted expressly for the purpose of holding the inmate.

7.1.5.1 Before transferring the inmate into the cell, the inmate shall be strip searched, screened on the BOSS chair and then issued a new set of clothes and shoes to wear.

7.1.5.2 The single-person cell shall be thoroughly searched prior to placing the inmate in the cell.

7.1.6 Place the inmate on 24-hour Continuous Observation and post staff to the inmate's cell on an on-going basis to maintain visual contact with the inmate until such time as the inmate is transferred to Housing Unit 9 at ASPC-Florence.

7.1.7 Establish an Observation Record to chronicle staff's observations of the inmate's activities and behavior until the sentence of death is imposed.

7.2 Conditions of Confinement – The ASPC-Eyman or ASPC-Perryville Warden shall:

7.2.1 Ensure none of the inmate's personal property is transferred with the inmate, except as provided in this section.

7.2.2 Have the inmate's personal property inventoried in their presence before the transfer of cells occurs and then have it boxed, sealed and removed from the cell. Store the inmate's property pending receipt of written instruction by the inmate regarding disposition of property or otherwise dispose of the property as outlined in section 2.0 of this Department Order.

7.2.3 Ensure all remaining property possessed by the inmate in the cell comply with indigent status items; any exceptions must be pre-approved in writing by the Assistant Director for Prison Operations.

7.2.4 Allow the inmate to keep in the cell one box each of legal and religious materials, a pencil and paper, and a book or periodical.

7.2.5 Issue the inmate a new mattress, pillow and bedding.

7.2.6 Provide the inmate limited hygiene supplies, including a towel and washcloth, and exchange these items on a daily basis.

7.2.7 Issue the inmate a clean set of clothing and bedding daily.

7.2.8 Ensure all inmate medications are unit-dosed and, when available issued in liquid form, and none of the inmate's medication including over-the-counter medications be dispensed or maintained by the inmate as Keep-on-Person.

7.2.9 Ensure the inmate has access to a department television set that is secured outside of the cell, and does not have access to any other appliances.

7.2.10 Continue to provide outdoor exercise and showers, non-contact visits and phone calls per the current schedule for other death row inmates in Browning or the Lumley Unit.

## 8.0 THIRTY-FIVE DAYS PRIOR TO THE DAY OF EXECUTION – CENTRAL OFFICE

8.1 The Assistant Director for Prison Operations:

8.1.1 Identifies and assigns team leaders and members, with documented approval by the Director, and upon approval shall activate the teams.

8.1.2 Confirms preventive maintenance in Housing Unit 9 occurs and that an equipment inventory is completed, and appropriate and timely action is taken.

8.1.3 Directs the initiation of the Continuous Observation Log commencing on the 35th day prior to the day of the execution. The log shall follow the inmate from ASPC-Eyman or ASPC-Perryville to Housing Unit 9 at ASPC-Florence and be maintained until the execution occurs or a stay of execution is issued.

8.1.4 Activates the training schedule ensuring staff participating in the execution receives adequate training, written instruction and practice, all of which is documented.

8.2 The Assistant Director for Medical Services

8.2.1 Directs ADC's Medical Services staff or ADC's contracted Medical Services provider to conduct a medical records file review to identify any prescribed medication(s) and dosages the inmate is currently or was recently taking. ADC's Medical Services staff or ADC's contracted Medical Services provider shall modify prescribed medications as may be necessary.

8.2.2 Directs ADC's Medical Services staff or ADC's contracted Medical Services provider to dispense all inmate medications in unit doses and, when available in liquid form. No medication including over-the-counter medications shall be provided or maintained by the inmate as Keep-on-Person.

8.2.3 Ensures ADC's Medical Services staff or ADC's contracted Medical Services provider continuously monitors for significant changes in the inmate's medical or mental health and reports findings immediately to the Department's General Counsel.

8.3 The Media Relations Office:

8.3.1 Issues a news advisory announcing the date of the execution.

8.3.2 Facilitates up to one non-contact interview with the inmate by phone, per day, with media from the day the Warrant is issued until the day before the sentence of death is imposed excluding weekends and state and federal holidays. The inmate and Attorney of Record may select among these requests that are submitted to the Media Relations Office and recommend the order in which they occur. The inmate may refuse any or all media requests for interviews.

8.4 The Office of Victim Services – Identifies and advises victims of the crime for which the inmate has been sentenced to death of the issuance of the Warrant of Execution and the scheduled date and time of the execution.

## 9.0 TWENTY-ONE DAYS PRIOR TO THE DAY OF EXECUTION – CENTRAL OFFICE

9.1 The Media Relations Office:

9.1.1 Forwards media-witness applications to the Inspector General for background investigation. The Inspector General shall advise the Director of any issues arising from such investigations.

9.1.2 Sends media-witness agreement forms (Official Witness Agreement, Form 710-6, and as applicable, Official Witness/Pool Reporter Agreement, Form 710-7) to identified media-witnesses, and establishes a deadline for the return of all such forms.

9.1.3 All witnesses shall sign and timely submit an Official Witness Agreement, Form 710-6, prior to being cleared and added to the witness list.

9.1.3.1 All official witnesses who are also members of media/press and are selected to serve as pool reporters shall also sign and timely return the Official Witness/Pool Reporter Agreement, Form 710-7.

## 10.0 FOURTEEN DAYS PRIOR TO THE DAY OF EXECUTION – CENTRAL OFFICE

10.1 The Inspector General or designee:

10.1.1 Finalizes arrangements with a Medical Examiner Office for the disposition of the body, security for the Medical Examiner's vehicle and the custodial transfer of the body.

10.1.2 Obtain a body bag and tag from the Medical Examiner's Office.

10.2 General Counsel:

10.2.1 Finalizes a list of all witnesses including official, victim, inmate witnesses and media/pool reporters, through coordination with the Offices of Victim Services and Media Relations, for the Director's review and documented approval.

10.2.1.1 Upon documented approval the Director or designee shall prepare a written invitation to each chosen witness. (See Attachment A.)

10.3 The Media Relations Office – Issue a news advisory announcing the date and time of the execution.

## 11.0 TWO DAYS PRIOR TO THE DAY OF EXECUTION

11.1 The Assistant Director for Prison Operations:

11.1.1 Schedules and conducts on-site scenario training sessions, modifying practices as warranted.

11.1.2 Confirms adequate staffing and vehicles are in place for regular operations and the execution.

11.2 The ASPC-Florence Warden:

11.2.1 Confirms staff assigned to the Maintenance Response Team (MRT) is scheduled and will be on-site eight hours prior to the time scheduled for the imposition of sentence.

11.2.2 Restricts access to Housing Unit 9 to those with expressly assigned duties.

11.2.3 Readies Housing Unit 9 for the transfer of the inmate.

11.2.4 Verifies execution inventory, including the chemicals to be used, and equipment checks are completed and open issues resolved.

## 12.0 TWENTY-FOUR HOURS PRIOR TO THE DAY OF EXECUTION

12.1 On-site scenario exercises continue.

12.2 Final preparation of Housing Unit 9 is completed. Each room receives final evaluation specific to its functions including security, climate control, lighting, sound, sanitation, and that separation screens and appropriate restraints are at the ready.

12.3 Detailed staff briefings are provided.

12.4 The ASPC-Eyman or ASPC-Perryville Warden shall ensure the inmate receives the last meal by 1900 hours. Every reasonable effort to accommodate the last meal request will have been made. All eating utensils and remaining food and beverage shall be removed upon completion of the meal.

12.5 The ASPC-Eyman or ASPC-Perryville Warden shall ensure non-contact visits and phone calls are concluded by 2100 hours.

12.5.1 The inmate's telephone privileges shall be terminated at 2100 hours the day prior to the execution, excluding calls from the inmate's Attorney of Record and others as approved by the Assistant Director for Prison Operations.

12.5.2 The inmate's visitation privileges shall be terminated at 2100 hours the day prior to the execution. The inmate will be permitted two hours of in-person visitation with no more than two Attorneys of Record, concluding one hour prior to the scheduled execution.

12.6 The inmate is prepared for transfer to Housing Unit 9 by the prescribed means.

## 13.0 TWELVE HOURS PRIOR TO AND THROUGH THE EXECUTION

13.1 Restricting Access to Institution Property – During the final twelve hours prior to the execution, access to ASPC-Eyman or ASPC-Perryville and ASPC-Florence is limited to:

13.1.1 On-duty personnel.

13.1.2 On-duty contract workers.

13.1.3 Volunteers deemed necessary by the Wardens.

13.1.4 Approved delivery vehicles.

13.1.5 Law enforcement personnel on business-related matters.

13.1.6 Restrictions to these facilities shall remain in effect until normal operations resume after the execution or a stay of execution is issued.

13.2 Transfer of the inmate from Browning or Lumley Unit to Housing Unit 9

13.2.1 The inmate shall be secured and transferred by the Execution Restraint Team per the prescribed means the night before the execution.

13.2.2 Housing Unit 9 staff shall take custody of the inmate and the Observation Log. Staff shall assume maintenance of the log until the execution is completed or a stay of execution is issued.

13.2.3 Upon the inmate's arrival, the inmate may be offered a mild sedative.

13.2.4 No later than five hours prior to the execution, the inmate shall be offered a light meal. All eating utensils and remaining food shall be removed upon completion of the meal.

13.2.5 No later than four hours prior to the execution, the inmate may be offered a mild sedative.

13.2.6 These time frames may be adjusted as necessary in the event of a stay of execution or other exigencies.

13.3 Housing Unit 9 Conditions of Confinement

13.3.1 The inmate shall remain on Continuous Watch. Staff shall record observations and make entries in the Observation Record during the final four hours in hours, and minutes.

13.3.2 The inmate shall be issued one pair each of pants, boxer shorts and socks, and a shirt on the morning of the execution.

13.3.3 The cell shall be furnished with a mattress, pillow and pillowcase, one each top and bottom sheet, a blanket, a washcloth and towel, and toilet paper.

13.3.4 The inmate may have a pencil and paper, religious items, a book or periodical and indigent-sized hygiene supplies (liquid soap, toothpaste) and a toothbrush and comb. These items may be made available only for the duration of the use and shall be removed immediately thereafter. Any other requested property shall require approval by the Assistant Director for Prison Operations, and shall be documented.

13.4 Population Management – ASPC-Eyman or ASPC-Perryville and ASPC-Florence shall go on lockdown status from between two to six hours prior to the time the execution is scheduled to occur at the direction of Command. They shall remain on lock down throughout the execution. After the conclusion of the execution, the prisons shall return to regular operations at the direction of Command.

13.5 Additional Operations Requirements

13.5.1 Witness Escort Teams shall process, transport and remain with pre-approved official witnesses, inmate witnesses, media witnesses and victim(s) witnesses through the conclusion of the execution and their return to designated staging areas per prescribed means.

13.5.1.1 Teams shall ensure each witness group is separated from the other witness groups at all times.

13.5.1.2 The Director or designee shall provide a brief overview of the execution for the official witnesses. The Director shall advise witnesses that the curtains in the execution chamber may be drawn prior to the conclusion of the execution in the event of a legitimate penological objective which would merit such closure and then reopened when the execution resumes, and that an IV Team member will enter into the chamber and physically manipulate the inmate to check consciousness.

13.5.1.3 In the event the inmate has designated one of his attorneys to witness the execution, temporary office space will be provided for the inmate's counsel in the Administration Building during the scheduled day of execution. One attorney and two additional members of the legal team may be permitted to remain in the office space during the execution. The inmate's legal team will be permitted to bring into the temporary office space one mobile phone, one tablet, and one laptop. While the attorney witness is in the witness room, a member of the Witness Escort Team shall hold one mobile phone designated by the attorney, to be made available to the attorney in exigent circumstances. The mobile phone may not be used inside the witness room.

13.5.2 Upon the direction of the Director to proceed:

13.5.2.1 The APSC-Florence Warden shall direct the Execution Restraint Team to prepare the inmate for escort into the execution chamber.

13.5.2.2 Prior to moving the inmate from the holding cell to the execution table, the Director shall confer with the Attorney General or designee and the Governor or designee to confirm there is no legal impediment to proceeding with the lawful execution.

13.5.2.3 When the inmate is secured on the execution table by the team and readied by qualified medical personnel, the Warden shall advise the Director.

13.5.2.4 The Director shall reconfirm with the Attorney General or designee and the Governor or designee that there is no legal impediment to proceeding. Upon oral confirmation that there is no legal impediment to proceeding with the execution, the Director may order the Warden to proceed with the execution.

13.5.2.4.1 If there is a legal impediment the Director shall instruct the ASPC-Florence Warden to stop, and to notify the inmate and witnesses that the execution has been stayed or delayed. The Warden shall also notify Command to notify the Media Relations staff who shall advise the media in the Press Room.

13.5.2.5 The Warden shall read aloud a summary of the Warrant of Execution. The Warden shall ask the inmate if he wishes to make a last statement. The microphone will remain on during the last statement. It will be turned off in the event the inmate uses vulgarity or makes intentionally offensive statements. If the microphone is turned off, it will be turned back on immediately after the completion of the last statement.

13.5.2.6 The Director shall instruct the disbursement of chemicals to begin by the prescribed means.

13.5.3 Pronouncement and Documentation of Death

13.5.3.1 The Director shall announce death when it has occurred.

13.5.3.2 The ASPC-Florence Warden shall complete and sign the return of the Death Warrant pursuant to A.R.S. §13-759. The Director shall file the document with the sentencing court and the Arizona Supreme Court within 48 hours.

13.5.3.3 A Medical Examiner shall take custody of the body and issue a Certificate of Death.

13.6 Stay of Execution – Upon receipt of notification that the court has issued a Stay of Execution; the Director shall consult with the Attorney General's Office and advise Command.

13.6.1 Upon receipt of notification, the Housing Unit 9 Section Leader shall:

13.6.1.1 Advise the witnesses a Stay of Execution has been issued.

13.6.1.2 Following consultation with the Director, direct that the catheters be removed, if applicable, and direct the Restraint Team to return the inmate to the holding cell.

13.6.1.3 Instruct the Special Operations to stand down.

13.6.2 Command shall inform the following teams of the Stay of Execution:

13.6.2.1 Traffic Control Team Leader

13.6.2.2 Population Assessment

13.6.2.3 Critical Incident Response Team Leader

13.6.2.4 Media Relations Director

13.6.2.5 Victim Services Team Leader

13.6.2.6 Escort Team leader

13.6.3 The Traffic Control Team Leader shall notify protestors of the issuance of the Stay of Execution.

13.6.4 The Escort Team shall commence escorting witness groups from Housing Unit 9 as set forth herein.

13.6.5 Upon Command's instruction, the inmate shall be transported from Housing Unit 9 back to Death Row at Browning or Lumley Unit and their personal possessions returned. Following the transport, the inmate will be permitted to consult with the inmate's attorney(s) upon request.

## 14.0 POST-EXECUTION

14.1 Removing Witnesses from Housing Unit 9

14.1.1 After the pronouncement of death, witnesses shall be escorted in the prescribed order from the facility.

14.1.1.1 Each group of witnesses will continue to be kept separated from the other groups at all times.

14.1.1.2 Official witnesses who are media pool reporters will return to the Press Room to participate in the media briefing.

14.1.1.3 Victim witnesses speaking with the media will be escorted to the Press Room.

14.1.2 Media may remain on site in a designated location outside the secure perimeter for a limited time to complete live broadcasts.

14.2 Site Clean Up

14.2.1 Under the supervision of a person designated by the ASPC-Florence Warden, Housing Unit 9 shall be cleaned and secured.

14.2.2 Institutional staff trained in infectious diseases preventive practices will utilize appropriate precautions in cleaning Housing Unit 9.

14.3 Normal Operations

14.3.1 Command shall determine when the prisons resume normal operations after receiving assessments from the Wardens of ASPC-Florence and ASPC-Eyman or ASPC-Perryville.

14.3.2 Department personnel shall be deactivated at the direction of Command.

14.4 Execution Documentation

14.4.1 The ASPC-Florence Warden shall be responsible to gather all documents pertaining to the execution and forward to the Department's General Counsel for archive.

14.4.2 Pursuant to A.R.S. §13-759 (B), the Director shall send written notification to the sentencing court and the Arizona Supreme Court stating the time, mode and manner in which the Warrant was carried out. (See Attachments B and C.)

## 15.0 PROCEDURES FOR NEWS MEDIA

15.1 Reasonable efforts will be made to accommodate representatives of the news media before, during and after a scheduled execution however; the Department reserves the right to regulate media access to ensure the orderly and safe operations of its prisons.

15.2 The Media Relations Office shall coordinate the release of information to news media outlets. All Department and contract staff are expressly prohibited from providing information not readily available in the public domain.

15.3 Update Prior to the Execution – Following activation of the Press Room, the Media Relations Director and the Public Information Officer shall provide the news media with regular briefings or updates.

15.4 Media Orientation and Releases – The Media Relations Director shall provide general information regarding the execution and about the inmate.

15.4.1 Media Representatives will be informed how the press pool will be established and advised that if they are selected as press pool witnesses, they shall be required to complete and sign Media Witness Press Pool Agreement, Form 710-7, in addition the Official Witness Agreement, Form 710-6, prior to the execution.

15.4.2 Media Representatives will return to the Press Room after the execution to answer questions of all other media representatives concerning their observations during the execution, prior to filing or reporting their story.

15.5 Press Room Operations

15.5.1 Media representatives requesting to witness an execution must submit written requests to the Media Relations Office no later than 28 days prior to the execution. Each request must include the name, social security number and birth date of media requesting access. Only those news organizations that have submitted written requests within the stated time frame shall be considered.

15.5.2 The Media Relations Office shall finalize recommendations for selected media to perform official witness/pool reporter functions 14 days prior to the execution.

15.6 Briefing Packets and Updates

15.6.1 The Media Relations Office shall provide press briefing packets for reporters.

15.6.2 A brief summary of inmate's activities during the final twenty-four hours, activities related to the execution and sequence of events, may be provided.

15.7 News Media Selection

15.7.1 No more than five members of the Arizona media may be selected to witness the execution as official witnesses. Selected media will perform the additional duties of pool reporter:

15.7.1.1 Print

15.7.1.2 Radio

15.7.1.3 Television/Cable

15.7.1.4 Local media representative in the market where the crime was committed

15.7.2 Media is held to the same standards for conduct as are all other official witnesses.

15.7.3 Command may exclude any media witness at any time if the media witness fails to abide by the provisions of the Official Witness and Pool Reporter Agreements (Forms 710-6 and 710-7).

15.7.4 Media witnesses are not permitted to bring unauthorized items into Housing Unit 9. Unauthorized items include:

15.7.4.1 Electronic or mechanical recording devices

15.7.4.2 Still, moving picture or video tape camera

15.7.4.3 Tape recorders or similar devices

15.7.4.4 Radio/television broadcasting devices

15.7.5 Each pool reporter shall be provided a tablet of paper and a pencil to take notes from the time they complete security screening and board the bus until they are returned to the Press Room after the conclusion of the execution.

15.7.6 Official witnesses who are pool reporters shall attend a pre-execution briefing.

## IMPLEMENTATION

The ASPC-Florence and ASPC-Perryville Wardens shall maintain Post Order #015, Death Watch Security Officer, delineating post-specific responsibilities. The ASPC-Florence Warden shall also maintain Post Order #015-A01, Housing Unit-9 Security Watch.

## ATTACHMENTS

Attachment A - Letter of Invitation to Witness an Execution
Attachment B - Return of Warrant Notification - Supreme Court
Attachment C - Return of Warrant Notification - Superior Court
Attachment D - Preparation and Administration of Chemicals
Attachment E – Lethal Gas

## FORMS LIST

710-1, Method of Execution
710-2, Inmate Witness Information
710-3, Disposition of Remains
710-4, Authorized Witnesses for Execution Log (A, B and C)
710-5, Last Meal Request
710-6, Official Witness Agreement
710-7, Official Witness/Pool Reporter Agreement
710-8, Notice of Execution Involvement

## AUTHORITY

A.R.S. §1-215 (28), Definitions
A.R.S. §13-105 (30), Definitions
A.R.S. §13-757 (B), Methods of Infliction of Sentence of Death
A.R.S. §13-757 (C), Identity of Executioners
A.R.S. §13-758, Persons Present at Execution of Sentence of Death; Limitations
A.R.S. §13-759 (B), Return Upon Death Warrant
A.R.S. §13-4021 through 13-4026, Insanity or Pregnancy of Persons under Death Sentence
Arizona Rules of Criminal Procedure, Rule 31.17(c)(3), Date and Time of Execution; Notification to Supreme Court

# ATTACHMENT A

## SAMPLE - LETTER OF INVITATION TO WITNESS AN EXECUTION

Date

Name
Mailing address
Mailing address

Dear _____

Thank you for expressing interesting in serving as a witness.

Please be advised that you are selected to witness the execution of _____ [name] _____ [number], on _____ [date] at _____ [time] subject to the conditions stipulated in this correspondence.

There are three kinds of witnesses. They are 1) Official Witnesses including Official Witnesses who are members of the media and will serve as Pool Reporters, 2) the Inmate's Witnesses and 3) the Victim(s) Witnesses.

All witnesses are required to complete the *Witness Agreement* form and return it to the Media Relations Office of the Arizona Department of Corrections, Rehabilitation and Reentry no later than _____ [date] by fax, mail, hand delivery or as an e-mail attachment.

Official Witnesses who are members of the media and will be serving as Pool Reporters are also required to complete the *Official Witnesses/Pool Reporters Agreement* form. This form must be returned as well to the Media Relations Office of the Arizona Department of Corrections, Rehabilitation and Reentry no later than the Friday before the scheduled date of the execution, _____ [date] by the same means.

Failure to fully complete and return on time the required forms with receipt by the Department before 5 P.M. on _____ [date], will result in your removal from the list of approved witnesses.

For additional information and to confirm receipt of your materials, you are welcome to contact the Media Relations Office by phone at 602-542-3133, by fax at 602-542-2859 or e-mail at media@azcorrections.gov.

Sincerely,

Media Relation Director

Applicable Attachments:
__*Witness Agreement* form
__ *Official Witnesses/Pool Reporters Agreement* form

# ATTACHMENT B

## SAMPLE - RETURN OF WARRANT NOTIFICATION

Supreme Court

**DATE:**

The Honorable
Chief Justice of the Supreme Court of Arizona
402 Arizona State Courts Building
1501 West Washington Street
Phoenix, Arizona 85007-3329

**RE:** Return of Warrant of Execution

State vs.

Supreme Court Number:

County Number:

Chief Justice:

This is to advise you that in accordance with the Warrant of Execution, Supreme Court Number, and pursuant to A.R.S. §13-759(B), the imposition of the sentence of death of _____ was carried out at the Arizona State Prison Complex-Florence on _____, 21 ____, at _____ A.M./P.M.

The mode and manner of the death was by lethal _____.

Sincerely,

David Shinn
Director
Arizona Department of Corrections, Rehabilitation and Reentry

# ATTACHMENT C

## SAMPLE - RETURN OF WARRANT NOTIFICATION

Superior Court

**DATE:**

The Honorable
Presiding Judge
Superior Court of Arizona
In County
_____, Arizona

**RE:** Return of Warrant of Execution

State vs.

Supreme Court Number:

County Number:

Judge _____:

This is to advise you that in accordance with the Warrant of Execution, Supreme Court Number, and pursuant to A.R.S. §13-759(B), the imposition of the sentence of death of _____ was carried out at the Arizona State Prison Complex-Florence on _____, 21 ____, at _____ A.M./P.M.

The mode and manner of the death was by lethal _____.

Sincerely,

David Shinn
Director
Arizona Department of Corrections, Rehabilitation and Reentry

# ATTACHMENT D

## PREPARATION AND ADMINISTRATION OF CHEMICALS

A. Obtaining Chemicals and Equipment

1. Upon receipt of the Warrant of Execution, the Housing Unit 9 Section Leader shall:

I. Confirm the equipment for the procedure and ensure all equipment necessary to properly conduct the procedure is on site, immediately available for use and functioning properly.

II. Ensure all medical equipment, including an ultrasound machine and a backup electrocardiograph is on site, immediately available for use and functioning properly.

III. Ensure that complete sets of chemicals are on site, not expired, and immediately available for use. ADC will only use chemicals in an execution that have an expiration or beyond-use date that is after the date that an execution is carried out. If the chemical's expiration or beyond-use date states only a month and year (e.g., "June 2017"), then ADC will not use that chemical after the last day of the month specified.

IV. Ensure the chemicals are ordered, arrive as scheduled and are properly stored. The chemicals shall be stored in a secured, locked area that is temperature regulated and monitored to ensure compliance with manufacturer specifications, under the direct control of the Housing Unit 9 Section Leader.

B. Preparation of Chemicals

1. Prior to the preparation of the chemicals, the Director or designee shall verify the chemicals to be used, the quantity and the expiration date.

2. At the appropriate time, the Housing Unit 9 Section Leader shall transfer custody of the chemicals to the Special Operations Team to begin the chemical(s) and syringe preparation in the chemical room, under the direct supervision by the IV Team Leader.

3. The Special Operations Team Leader will assign a team member(s) to assist preparing each chemical and the corresponding syringe. The IV Team Leader will supervise the process. The IV Team Leader, with the assistance of the Special Operations Team members, shall prepare the designated chemical(s) and syringes as follows:

- One-drug protocol - One full set of syringes is used in the implementation of the death sentence (Bank "A") and an additional complete set of the necessary chemicals shall be obtained and kept available in the chemical room, but need not be drawn into syringes unless the primary dosages prove to be insufficient for successful completion of the execution.

4. The IV Team Leader, with the assistance of a Special Operations Team member, shall be responsible for preparing and labeling the assigned sterile syringes in a distinctive manner identifying the specific chemical contained in each syringe by i) assigned number, ii) chemical name, iii) chemical amount and iv) the designated color, as set forth in the chemical charts below. This information shall be preprinted on a label, with one label affixed to each syringe to ensure the label remains visible.

C. Chemical Charts; Choice of Protocol

1. Charts for all chemical protocols follow. The Director shall have the sole discretion as to which drug protocol will be used for the scheduled execution. This decision will be provided to the inmate and their counsel of record in writing at the time the state files a request for Warrant of Execution in the Arizona Supreme Court. If the Department is able to obtain the chemical pentobarbital in sufficient quantity and quality to successfully implement the one-drug protocol with pentobarbital set forth in Chart A, then the Director shall use the one-drug protocol with pentobarbital set forth in Chart A as the drug protocol for execution. If the Department is unable to obtain such pentobarbital, but is able to obtain the chemical sodium pentothal in sufficient quantity and quality to successfully implement the one-drug protocol with sodium pentothal set forth in Chart B, then the Director shall use the one-drug protocol with sodium pentothal set forth in Chart B as the drug protocol for execution.

2. A quantitative analysis of any compounded or non-compounded chemical to be used in the execution shall be provided upon request within ten calendar days after the state seeks a Warrant of Execution. The decision to use a compounded or non-compounded chemical will be provided to the inmate and their counsel of record in writing at the time the state files a request for Warrant of Execution in the Arizona Supreme Court.

**CHART A: ONE-DRUG PROTOCOL WITH PENTOBARBITAL**

| CHEMICAL CHART | |
|---|---|
| **Syringe No.** | **Label** |
| **1A** | 20mL Sterile Saline Solution, **BLACK** |
| **2A** | 2.5gm Pentobarbital, **GREEN** |
| **3A** | 2.5gm Pentobarbital, **GREEN** |
| **4A** | 20mL Sterile Saline Solution, **BLACK** |

- Syringes 2A, and 3A, will have a dose of 2.5 grams (gm) of Pentobarbital for a total of 5 grams. Each syringe containing Pentobarbital shall have a **GREEN** label which contains the name of chemical, chemical amount and the designated syringe number.

- Syringes 1A, and 4A, each contain 20 milliliters (mL) of a sterile saline solution, and shall have a **BLACK** label which contains the name of the chemical, chemical amount and the designated syringe number.

**CHART B: ONE-DRUG PROTOCOL WITH SODIUM PENTOTHAL**

| | |
|---|---|
| **Syringe No.** | **Label** |
| **1A** | 20mL Sterile Saline Solution, **BLACK** |
| **2A** | 1.25gm Sodium Pentothal, **GREEN** |
| **3A** | 1.25gm Sodium Pentothal, **GREEN** |
| **4A** | 1.25gm Sodium Pentothal, **GREEN** |
| **5A** | 1.25gm Sodium Pentothal, **GREEN** |
| **6A** | 20mL Sterile Saline Solution, **BLACK** |

- Syringes 2A, 3A, 4A, 5A, each contain 1.25gm/50mL of Sodium Pentothal / 1 in 50mL of sterile water in four 60mL syringes for a total dose of 5 grams of Sodium Pentothal. Each syringe containing Sodium Pentothal shall have a **GREEN** label which contains the name of chemical, chemical amount and the designated syringe number.

- Syringes 1A, and 6A, each contain 20mL of a sterile saline solution, and shall have a **BLACK** label which contains the name of the chemical, chemical amount and the designated syringe number.

3. After the IV Team prepares all required syringes with the proper chemicals and labels as provided in the Chemical Chart, the Special Operations Team, under the supervision of the IV Team, shall attach one complete set of the prepared and labeled syringes to the 2-Gang, 2-Way Manifold in the order in which the chemical(s) are to be administered. The syringes will be attached to the 2-Gang, 2-Way Manifold in a manner to ensure there is no crowding, with each syringe resting in its corresponding place in the shadow board which is labeled with the name of the chemical, color, chemical amount and the designated syringe number.

4. The syringes shall be affixed in such a manner to ensure the syringe labels are clearly visible. Prior to attaching the syringes to the 2-Gang, 2-Way Manifold, the flow of each gauge on the manifold shall be checked by the IV Team Leader running the sterile saline solution through the line to confirm there is no obstruction.

5. After all syringes are prepared and affixed to the 2-Gang, 2-Way Manifold in proper order, the Special Operations Team Leader shall confirm that all syringes are properly labeled and attached to the manifold in the order in which the chemicals are to be administered as designated by the Chemical Chart. Each chemical shall be administered in the predetermined order in which the syringes are affixed to the manifold.

6. The quantities and types of chemicals prepared and administered as set forth in this Department Order may not be changed in any manner without prior documented approval of the Director and publication of an amended Department Order. The Director's discretion with regard to the quantities and types of chemicals is otherwise limited to what is expressly set forth in this Department Order. If, after a Warrant of Execution has been issued, the Director determines that it is necessary to change the quantities or types of chemicals to be used in the impending execution, then the Director shall immediately notify the inmate and the inmate's counsel in writing, shall withdraw the existing Warrant of Execution, and shall apply for a new Warrant of Execution.

7. All prepared chemicals shall be utilized or properly disposed of in a timely manner after the time designated for the execution to occur.

8. The chemical amounts as set forth in the Chemical Chart are designated for the execution of persons weighing 500 pounds or less. The chemical amounts will be reviewed and may be revised as necessary for an inmate exceeding this body weight.

9. The Special Operations Team Recorder is responsible for completing the Correctional Service Log, Form 105-6. The Recorder shall document on the form the amount of each chemical administered and confirm that it was administered in the order set forth in the Chemical Chart. Any deviation from the written procedure shall be noted and explained on the form.

D. Movement and Monitoring of Inmate

1. Prior to moving the inmate from the holding cell to the execution table, the Director will confer with the Attorney General or designee and the Governor or designee to confirm there is no legal impediment to proceeding with the lawful execution and there are no motions pending before a court which may stay further proceedings.

2. The inmate may be offered a mild sedative based on the inmate's need. The sedative shall be provided to the inmate no later than four hours prior to the execution, unless it is determined medically necessary. The offer of the mild sedative, the inmate's decision, and the administration of the sedative, if chosen, shall be documented in the watch log.

3. At the designated time, the overhead microphone will be turned on, and shall be left on until the completion of the execution, and the inmate will be brought into the execution room and secured on the table by the prescribed means with the inmate's arms positioned at an angle away from the inmate's side. Existing closed-circuit monitors will allow witnesses in the designated witness room to observe this process.

4. The inmate will be positioned to enable the IV Team or the Special Operations Team Leader and the Warden to directly observe the inmate and to monitor the inmate's face with the aid of a high resolution color camera and a high resolution color monitor.

5. After the inmate has been secured to the execution table, the Restraint Team Leader shall personally check the restraints which secure the inmate to the table to ensure they are not so restrictive as to impede the inmate's circulation, yet sufficient to prevent the inmate from manipulating the catheter and IV lines.

6. A microphone will be affixed to the inmate's shirt, and shall be left on until the completion of the execution, to enable the persons in the witness room and the IV Team or the Special Operations Team Leader to hear any utterances or noises made by the inmate throughout the procedure. The Special Operations Team Leader will confirm the microphone is functioning properly, and that the inmate can be heard in the chemical room and in the witness room.

7. The Restraint Team members will attach the leads from the electrocardiograph to the inmate's chest once the inmate is secured. The IV Team Leader shall confirm that the electrocardiograph is functioning properly and that the proper graph paper is used. A backup electrocardiograph shall be on site and readily available if necessary. Prior to the day of, and on the day of the execution both electrocardiograph instruments shall be checked to confirm they are functioning properly.

8. An IV Team member shall be assigned to monitor the EKG, and mark the EKG graph paper at the commencement and completion of the administration of the lethal chemical(s).

9. Throughout the procedure, the IV Team Leader shall monitor the inmate's level of consciousness and electrocardiograph readings utilizing direct observation, audio equipment, camera and monitor as well as any other medically approved method(s) deemed necessary by the IV Team Leader. The IV Team Leader shall be responsible for monitoring the inmate's level of consciousness.

10. Existing closed-circuit monitors will allow witnesses in the designated witness room to observe the IV Team's vein assessment and placement of IV catheters in the inmate. In addition, the audio feed from the overhead microphone and from the microphone affixed to the inmate's shirt shall remain on until the completion of the execution.

11. A camera will be focused on the area in the chemical room in which syringes are injected into the IV line, and existing closed-circuit monitors will allow witnesses in the designated witness room to observe the administration of the lethal injection drug(s), including the administration of additional or subsequent doses of the drug(s). All cameras and monitors shall be placed in such a manner so as to ensure and preserve at all times the anonymity of all personnel involved in the execution process.

E. Intravenous Lines

1. The Director acting upon the advice of the IV Team Leader shall determine the catheter sites. A femoral central line shall only be used if the person inserting the line is currently qualified by experience, training, certification or licensure within the United States to insert a femoral central line. The IV Team members shall insert a primary IV catheter and a backup IV catheter.

2. The IV Team Leader shall ensure the catheters are properly secured and properly connected to the IV lines and out of reach of the inmate's hands. A flow of sterile saline solution shall be started in each line and administered at a slow rate to keep the lines open.

3. The primary IV catheter will be used to administer the lethal chemical(s) and the backup catheter will be reserved in the event of the failure of the first line. Any failure of a venous access line shall be immediately reported to the Director.

4. The IV catheter in use shall remain visible to the Warden throughout the procedure.

5. The Warden shall physically remain in the room with the inmate throughout the administration of the lethal chemical(s) in a position sufficient to clearly observe the inmate and the primary and backup IV sites for any potential problems and shall immediately notify the IV Team Leader and Director should any issue occur. Upon receipt of such notification, the Director may stop the proceedings and take all steps necessary in consultation with the IV Team Leader prior to proceeding further with the execution.

6. Should the use of the backup IV catheter be determined to be necessary, a set of backup chemicals should be administered in the backup IV.

F. Administration of Chemicals – One-Drug Protocol

1. At the time the execution is to commence and prior to administering the lethal chemical, the Director will reconfirm with the Attorney General or designee and the Governor or designee that there is no legal impediment to proceeding with the execution. Upon receipt of oral confirmation that there is no legal impediment, the Director will order the administration of the chemical to begin.

2. Upon receipt of the Director's order and under observation of the IV Team Leader, the Special Operations Team Leader will instruct the assigned Special Operations Team member(s) to begin dispensing the chemicals under the chosen drug protocol.

3. Upon direction from the Special Operations Team Leader, the assigned Special Operations Team member will visually and orally confirm the chemical name on the syringe and then administer the first syringe of the sterile saline solution, followed by the full dose of the lethal chemical immediately followed by the sterile saline solution flush.

4. When three minutes has elapsed since commencing the administration of the lethal chemical, the IV Team Leader, dressed in a manner to preserve their anonymity, will enter into the room where the Warden and inmate are located to physically confirm the inmate is unconscious by using all necessary medically appropriate methods, and verbally advise the Director of the same. The IV Team Leader will also confirm that the IV line remains affixed and functioning properly.

5. If, after three minutes, the inmate remains conscious, the IV Team shall communicate this information to the Director, along with all IV Team input. The Director will determine how to proceed or, if necessary, to start the procedure over at a later time or stand down. The Director may direct the curtains to the witness viewing room be closed, and, if necessary, for witnesses to be removed from the facility, only in the event of a legitimate penological objective which would merit such closure and/or removal.

6. If deemed appropriate, the Director may instruct the Special Operations Team to administer an additional dose of the lethal chemical followed by the sterile saline solution flush. This may be administered via the primary or backup IV catheter, as determined following consultation with the IV Team.

7. Upon administering the lethal chemical and sterile saline solution from a backup set, the IV Team shall determine whether the inmate is unconscious by sight and sound, utilizing the audio equipment, camera and monitor. The IV Team Leader will again physically determine whether the inmate is unconscious using proper medical procedures and verbally advise the Director of the same.

8. When all electrical activity of the heart has ceased as shown by the electrocardiograph, the IV Team Leader will confirm the inmate is deceased and the inmate's death shall be announced by the Director.

9. The Special Operations Team Recorder shall document on the Correctional Services Log the start and end times of the administration of the lethal chemical.

10. Throughout the entire procedure, the IV Team members, the Special Operations Team members and the Warden shall continually monitor the inmate using all available means to ensure that the inmate remains unconscious and that there are no complications.

G. Contingency Procedure

1. An Automated External Defibrillator (AED) will be readily available on site in the event that the inmate goes into cardiac arrest at any time prior to dispensing the chemicals; trained medical staff shall make every effort to revive the inmate should this occur.

2. Trained medical personnel and emergency transportation, neither of which is involved in the execution process, shall be available in proximity to respond to the inmate should any medical emergency arise at any time before the order to proceed with the execution is issued by the Director.

3. If at any point any team member determines that any part of the execution process is not going according to procedure, they shall advise the IV Team Leader who shall immediately notify the Director. The Director may consult with persons deemed appropriate and will determine to go forward with the procedure, limited to the option provided in Attachment D, §F(6), or to stand down. If the Director determines to stand down, then trained medical staff shall make every reasonable effort to revive the inmate.

4. There shall be no deviation from the procedures as set forth herein, except as expressly allowed herein. There shall be no deviation from the procedures as set forth herein without prior consent from the Director. Although such consent may be verbal or in writing, the Director must memorialize and maintain a written record of having granted any deviations, which record must include a detailed description of the deviation, the basis for the deviation, and the basis for the Director's consent thereto.

H. Post Execution Procedures

1. Upon the pronouncement of death, the Director shall notify the Governor or designee and the Attorney General or designee via telephone that the sentence has been carried out and the time that death occurred.

2. An IV Team member will clamp and cut the IV lines leaving them connected to the inmate for examination by a Medical Examiner.

3. A Criminal Investigations Unit Investigator and a Medical Examiner will take photos of the inmate's body:

   - While in restraints prior to being placed in the body bag,
   - Without restrains prior to being placed in the body bag,
   - Sealed in the body bag, and
   - A photo of the seal in place on the bag.

4. The inmate's body will be placed on a Medical Examiner's gurney and released into the custody of a Medical Examiner's Office.

5. Once the inmate's body is placed in a Medical Examiner's transport vehicle, it will be escorted off the premises. The Examiner's Office will take the inmate's body to the medical examiner's office designated by the county.

I. Documentation of Chemicals and Stay

1. In the event that a pending stay results in more than a two hour delay, the catheters shall be removed, if applicable, and the inmate shall be returned to the holding cell until further notice.

2. The Correctional Service Logs the list of identifiers and the EKG tape shall be submitted to the Department's General Counsel for review and storage.

J. Debrief and Policy Review

1. The IV and Special Operations Teams will participate in an informal debriefing immediately upon completion of the event.

2. Upon an assignment to a Team, team members shall review Department Order #710, Execution Procedures.

3. Periodically, and in the discretion of the Director, a review of Department Order #710, Execution Procedures along with this attachment may be reviewed to confirm it remains consistent with the law. General Counsel shall advise the Director immediately upon any change that may impact these procedures.

# ATTACHMENT E

## LETHAL GAS

1. Approximately 10 minutes before the execution, Chemical Operators #1 and #2 shall sequentially pour 6 QUARTS OF DISTILLED WATER and 5 PINTS OF SULPHURIC ACID into the mixing pot (9). THE WATER SHOULD BE POURED FIRST. UPON COMPLETION OF POURING THE WATER, 5 PINTS OF SULFURIC ACID SHOULD BE POURED NEXT. RUBBER GLOVES AND GLASS FUNNEL SHALL BE USED. THE ACID MUST BE POURED SLOWLY TO PREVENT SPLATTERING. This mixture should remain in the mixing pot (9) for approximately 10 minutes so as to attain an adequate mix and maximum temperature. Keep away from acid fumes and possible splatter caused by boiling. This mixture will yield a 41.5% concentration.

    - Chemical Operator #1 shall ensure that the mixture shall not pass to the chair receptacle until after the Chamber door is closed and instructions received from the Chamber Operator.

    - The Caustic Soda Neutralizing solution shall be prepared by Chemical Operator #2 immediately after the completion of the acid mixture.

    - Chemical Operator #2 shall put on rubber gloves and dissolve 1 pound of CAUSTIC SODA into 2½ gallons of water already in a pour-spout can. Once the mixing process is complete, this solution should be kept near the mixing on the floor in close proximity to the mixing pot (9).

    - Chemical Operator #2 shall dissolve 30 grains of Phenolptalein Solution in 4 ounces of alcohol. If the solution is pre-mixed, then skip this step.

    - Chemical Operator #2 shall relay to the Special Operations Team Leader that the chemical mixing process is complete.

    - The Housing Unit 9 Team Leader will notify the Director that the chemical mixing is complete and the chamber is ready.

    - The Director will instruct the Housing Unit 9 Team Leader to move the inmate to the chamber.

2. The inmate shall be brought into the execution room and placed in the Chamber and strapped in the chair by the Restraint Team. The internal Chamber microphone will be turned on and a microphone will be affixed to the inmate's shirt and also turned on; both microphones shall remain on until the completion of the execution (the microphones will remain on during any last statement by the inmate, but will be turned off in the event the inmate uses vulgarity or makes intentionally offensive statements; if the microphones are turned off, they will be turned back on immediately after the completion of the last statement) to enable the persons in the witness room and the Special Operations Team Leader to hear any utterances or noises made by the inmate throughout the procedure. The Special Operations Team Leader will confirm that the microphones are functioning properly and that the inmate can be heard in the operations room and in the witness room.

a. Closed-circuit monitor(s) will allow witnesses in the designated witness room to observe this process and shall remain on until the completion of the execution. All cameras and monitors shall be placed in such a manner so as to ensure and preserve at all times the anonymity of all personnel involved in the execution process.

3. Chemical Operator #2 shall place 4 petri dishes containing the Phenolptalein Solution inside the chamber so as to be clearly visible to the Chamber Operator. (Location should be at each designated corner of the chamber.)

4. After the inmate is strapped in the chair, Chemical Operator #2 shall verify that the petri dishes containing Phenolphthalein are still in their proper place.

5. Chemical Operator #2 shall inspect the GAS VALVE LEVER (1) and GAS VALVE POT (10) to ensure that it is dry and in the Closed position. Once this is confirmed, Chemical Operator #2 shall place the sodium cyanide packets in the GAS VALVE POT (10) under the chair.

6. Chemical Operator #2 and the Chamber Operator shall close the Chamber door and ensure that it is properly sealed.

7. The Chamber Operator shall ensure that the fan damper is in the closed position. Once this is confirmed, the chamber fan shall be activated and left on.

- The manometer H pressure gauge readings on the chamber shall be monitored to determine air tightness of Chamber.

- The Chamber will be considered air-tight if the manometer gauge to the right has a higher reading than the left.

- If the readings on both the manometer H gauges remain equal, the Chamber Operator shall notify the Housing Unit 9 Team Leader immediately.

8. The Chamber Operator shall position himself at the GAS VALVE LEVER (1).

9. The Chamber Operator shall ensure that the Outlet Valve (4) is closed. This Outlet Valve (4) shall remain closed until the chamber is cleared.

10. Chemical Operator #2 shall proceed back to the Chemical preparation room.

11. The Housing Unit 9 Team Leader shall notify the Director that the chamber is ready.

12. Chemical Operator #1 and the Chamber Operator shall release the mixed acid and water from the mixing pot (9) into the Gas Generator by opening the Acid Mixing Pot Valve (Red lever) and Inlet Valve (3). Chemical Operator #1 shall visually observe the liquid drain from the mixing pot. Once fully drained, Chemical Operator #1 shall close the Acid Mixing Pot Valve and place it in the Closed Position.

13. Chemical Operator #1 shall notify the Chamber Operator that the acid mixture is fully drained.

14. The Chamber Operator shall close the inlet valve (3) and advise the Chemical Operators when complete.

15. Chemical Operator #2 shall fill the mixing pot (9) with the Caustic Soda solution.

16. The Chamber Operator shall then advise the Housing Unit 9 Team Leader that the Chamber is ready for use.

17. The Housing Unit 9 Team Leader shall notify the Director that everything is ready to proceed. The Director shall make the final notifications to the Attorney General.

18. The Director shall instruct the Chamber Operator to remove the locking pin of the GAS VALVE LEVER (1) (Sodium Cyanide immersion lever) and open the immersion valve, to drop the pellets into the acid in the gas generator. The Gas Valve Lever (1) shall remain open until the clearing process of chamber is initiated.

19. With the Chamber in operation, the Housing Unit 9 Team Leader and the Recorder will observe and record as necessary. A member of the medical team shall monitor the Inmate and EKG and shall advise the Director when the inmate has expired, providing the corresponding time of death.

20. The Director will announce that the execution has been completed. The Housing Unit 9 Team Leader will instruct the Operators to "Clear the Chamber".

    - NOTE: The length of time required should be determined by a member of the medical team and the Housing Unit 9 Team Leader. It is recommended that this period should be no less than 10 minutes.

21. When the Housing Unit 9 Team Leader announces "Clear the Chamber", the Chamber Operator shall move the exhaust fan damper lever (5) into the open position.

22. The Chamber Operator shall close the GAS VALVE LEVER (1) into the closed position for clearing.

23. Chemical Operator #1 and the Chamber Operator shall drain the Caustic Soda Solution into the gas generator. Chemical Operator #1 shall open the Acid Mixing Pot Valve (9). The Chamber Operator shall open the Inlet Valve (3) and allow caustic soda to fully drain into the gas generator.

24. Chemical Operator #1 shall monitor the CAUSTIC SODA SOLUTION until the Acid Mixing Pot is fully drained and empty.

25. Once the Acid Mixing Pot (9) is empty, Chemical Operator #1 shall close the mixing pot valve (Red Valve) and instruct the Chamber Operator to close the Inlet Valve (3).

26. The Chamber Operator shall inform the Chemical Operators once the Inlet Valve (3) is closed.

27. The Chemical Operator shall fill the mixing pot with water.

28. The Chamber Operator shall open the air manifold intake lever (2), which may be opened with graduated steps.

29. The Chamber Operator shall open the Outlet Valve (4), opening the gas generator drain valve first, and then opening the Inlet Valve (3).

30. Once the Inlet and Outlet Valves are fully open, the Chamber Operator shall inform the Chemical Operators to begin flushing.

31. The Chemical Operators shall open the water faucet, allowing additional water to flow into the mixing pot (9).

- The Chemical Operators shall observe the drainage of water from the mixing pot to ensure that the flushing is proceeding properly. During this period, the Chamber Operator shall perform the following functions:

    a. The Chamber Operator and Chemical Operator #1 shall fully open the anhydrous ammonia tank valve, then open ammonia control valves (7) and (8) (on the regulators) gradually to reach the saturation to allow the effective neutralization of the residual chemicals in the chamber, gas generator and plumbing. After 30 seconds, both Operators shall close the ammonia tanks in the following sequence: The tank valves shall be closed first, and, after approximately 30 seconds, the regulator valves (7) and (8) shall be closed. This will allow the ammonia to drain from the piping. Anhydrous ammonia valves should be CLOSED OUT AT LEAST THREE MINUTES BEFORE OPENING THE CHAMBER DOOR.

    b. After the Chamber is completely evacuated of gas and purged of the ammonia fumes, the phenolphthalein in the petri dishes should turn red (pinkish) in color. This color change is an indication that the Chamber door may be safely opened. A member of the medical team and Restraint Team now may enter, using masks for protection from any residual ammonia fumes. The Chamber Operator shall close the air valve lever (2).

- CAUTION: Although smoke tests suggest that the Chamber is purged in approximately 3 to 5 minutes, it is recommended that the period between opening the exhaust and air inlet valves and opening the Chamber door be about 15 minutes. As a precautionary measure, it is recommended that the Physician and the Restraint Team removing the body wear hydrocyanic acid gas masks or approved respirators and rubber gloves and that the hair of the deceased inmate be ruffled in order to allow any residually trapped gas to escape. Close the Chamber door, but not tightened more than contact with the gasket, and aerate for one hour as necessary to clear any residual ammonia.

32. The Restraint Team shall hose down all the surfaces and the deceased inmate prior to removal from the chair.

# EXHIBIT 2

Office of the
**FEDERAL PUBLIC DEFENDER**
for the District of Arizona
**Capital Habeas Unit**

**Jon M. Sands**
Federal Public Defender

**direct line**: (602) 382-2816
**email**: Dale_Baich@fd.org

March 8, 2021

David Shinn, Director
Arizona Department of Corrections
1601 West Jefferson
Phoenix, Arizona 85007

Dear Director Shinn:

I am writing to request public records from the Arizona Department of Corrections (ADOC) under A.R.S. §§ 39-101 *et seq.* I seek copies of all records[1] in ADOC's possession relating to the information identified below from January 1, 2020 through the present date as well as on an ongoing basis. As ADOC comes into possession of additional records responsive to this request, please provide them to me.

1. Execution training logs, written materials, training guides, presentations, manuals, curricula, training schedules or any other documents related to execution team member training.

[1] The term "records" in this request is defined as "all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media pursuant to § 41-151.16, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained in the record, and includes records that are made confidential by statute." A.R.S. § 41-151.18.

2. Documents or other records regarding pentobarbital[2] or sodium thiopental,[3] including but not limited to:

    - State and/or federal drug forms, including Drug Enforcement Administration ("DEA") 222 forms and importation forms;
    - Chain of custody documents;
    - Purchase orders, invoices, checks, money orders and receipts.

3. Execution Drug Inventory Logs.

4. Documents relating to registration with the DEA and/or licenses issued by the DEA to possess, handle, dispense or import controlled substances, including correspondence and/or documents related to the application process.

5. Communications between ADOC and any party, including other state agencies, pharmacies, other Departments of Corrections and the Bureau of Prisons regarding pentobarbital or thiopental.

6. Communications between ADOC and the Food and Drug Administration ("FDA"), DEA, Customs and Border Protection ("CBP") and/or any other federal agency, office or personnel regarding pentobarbital or thiopental.

7. Communications between ADOC and any and all importers, customs agents, shipping companies, shipping agents, carriers, import/export merchants or any other party regarding the importation or purchase of imported pentobarbital or thiopental.

8. Documents regarding the importation of pentobarbital or thiopental, including chain of custody documents, shipping, delivery, payment, storage and timeline. This includes documentation related to compliance with federal

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[2] Pentobarbital under any name whatsoever, including but not limited to: Nembutal, pentobarbitone, or any non-English equivalents.

[3] Sodium thiopental (hereinafter referred to as "thiopental"), under any name whatsoever, including but not limited to: thiopental sodium, Sodium Pentothal, Trapanal, pentothal, sothio, or any non-English equivalents.

laws, rules or regulations applicable to foreign imports.

9. Documents related to testing of pentobarbital or thiopental including, but not limited to, correspondence to or from any laboratory; internal or external correspondence regarding testing; testing standards, protocols or studies; documents regarding payment for services; and all results of testing including any raw data or notes.

Under A.R.S. § 39-121.01(D)(1), I ask that you promptly furnish me copies of these documents. I will pay any copying fees incurred for these documents.

If you have any questions about my request, please feel free to call me at 602-382-2816.

Sincerely,

Dale A. Baich
Attorney Supervisor
Capital Habeas Unit

DAB/ddj

# EXHIBIT 3

Office of the
**FEDERAL PUBLIC DEFENDER**
for the District of Arizona
**Capital Habeas Unit**

**Jon M. Sands**
Federal Public Defender

**direct line**: (602) 382-2816
**email**: Dale_Baich@fd.org

July 21, 2021

Public Information Officer
Arizona Department of Corrections Rehabilitation & Reentry
1601 W Jefferson
Phoenix, Arizona 85007

Dear Public Information Officer:

I am writing to request public records from the Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR) under the Arizona Public Records Law, A.R.S. §§ 39-101 *et seq*. I seek copies of all records[1] in ADCRR's possession relating to the information identified below from January 1, 2020, through the present date and on an ongoing basis. Moreover, as ADCRR comes into possession of additional records responsive to this request, please provide those to me as well. Please provide all records in their native format. The public records I seek are the following:

1. Documents and other records regarding pentobarbital[2] including but not limited to:
   - Communication between ADCRR and any third-party regarding pentobarbital;
   - Purchase orders, invoices, checks, money orders, and receipts;
   - State and/or federal forms, including Drug Enforcement Administration (DEA) 222 forms, importation forms, and any other forms relating to the API from all federal and state agencies

[1] The term "record" is meant to convey the broadest possible meaning, including but not limited to: correspondence, communications, contracts, logs, telephone logs, reports, printouts of internet research, forms, registrations, certifications, and licenses, maintained in whatever format, including but not limited to written, electronic, or audio format. *See also* A.R.S. § 41-151.18 ("records means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media pursuant to section 41-151.16, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained in the record, and includes records that are made confidential by statute.").

[2] Pentobarbital under any name whatsoever, including but not limited to Nembutal, pentobarbitone, pentobarbital sodium, any non-English equivalents and compounded pentobarbital.

- Chain-of-custody documents
- Inventory logs
- Documents regarding shipping, delivery, and storage
- Results of pharmaceutical testing, including laboratory reports, certificates of analysis and any raw data or notes; documents related to testing standards, timelines, protocols, or studies

2. In response to a previous request for public records,[3] ADCRR released two Laboratory Reports. Laboratory Report #1 is dated March 19, 2021 and indicates an examination of Item 1, an "Amber bottle, Lot # 28502." The report also indicates "Items# 2, 3, and 4 were received but not analyzed." Laboratory Report # 2 is dated March 31, 2021 and indicates and examination of Item 5, an "Amber bottle, Lot# 29114."

   We request all records related to:

   - Laboratory Report #1
   - Item #1
   - Lot # 28502
   - Items #s 2, 3 and 4
   - Item # 5
   - Lot # 29114

3. In response to a previous request for public records, ADCRR released an order form dated October 22, 2020, which shows an order of 1000 grams of "Pentobarbital sodium salt" for $1.5 million dollars. The form indicated the product was to be shipped in "Unmarked jars and boxes" and "Shipping location AZ (to be determined)."

   We request all records related to the order of pentobarbital sodium, including but not limited to:

   - Certificates of analysis for the pentobarbital sodium salt, which federal law requires to accompany bulk drugs substances for compounding. *See* 21 U.S.C. § 353a(b)(1)(A)(iii) and § 353b(a)(2)(D)

[3] Jimmy Jenkins, *Arizona Backtracks on Expiration Date for Death Penalty Drugs*, KJZZ (Jun. 23, 2021) https://kjzz.org/content/1693810/arizona-backtracks-expiration-date-death-penalty-drugs.

- All other records transmitted by the providers of the pentobarbital sodium salt
- State and/or federal forms, including Drug Enforcement Administration (DEA) 222 forms; importation forms; and any other forms relating to the API from all federal and state agencies
- Chain-of-custody documents
- Inventory logs
- Documents regarding shipping, delivery, and storage

4. In response to a previous request for public records, ADCRR produced an invoice for "Pharmaceutical Consulting Services" dated February 24, 2021, in the amount of $440,000.

   We request all records related to the pharmaceutical consulting services, including but not limited to:

   - Communications between ADCRR and any party, including individuals providing consulting services
   - Documents related to contracts, including but not limited to: RFPs, the scope of services provided; fee schedules; all contract bidders
   - Documents related to testing standards, timelines, protocols, or studies
   - Results of pharmaceutical testing, including any raw data and notes.

5. On April 6, 2021, the State of Arizona filed a "Motion to Set a Briefing Schedule for Motion of Warrant of Execution" for Clarence Dixon. In the motion, the State referenced "its testing and disclosure obligations regarding to the drug to be used in the execution." Motion at 1. The State also asserted that "[o]nce compounded, based on current testing, the drug has a beyond-use date (aka expiration date) of 90 days from compounding." *Id.* at 2.

   Please provide all records related to:

   - ADCRR's "testing and disclosure obligations" referenced in the Motion;
   - Records regarding the "current testing" that the original 90-day beyond-use date referenced in the motion was based on.

6. On June 6, 2021, the State of Arizona filed a "Motion to Modify Briefing Schedule." In that motion, the State disclosed that the original 90-day beyond-use date assigned to the compound pentobarbital was incorrect and the

pharmacist has "revised that opinion and has advised ADCRR that, until certain specialized testing of a sample batch is conducted, pentobarbital that is compounded for Dixon's execution will have an initial beyond-use date of 45 days." Motion at 2. The State further stated that "specialized testing has not commenced." *Id*.

Please provide all records relating to:

- Communications between ADCRR and any third party, including pharmacists, regarding the original 90-day beyond-use date; the revised 45-day beyond-use date; the compounding of all batches of pentobarbital; and the pharmacist's "revised opinion."
- Documents related to the original 90-day beyond-use date and the revised 45-day beyond-use date, including but not limited to laboratory results, testing standards, timelines, protocols, and laboratory bench notes.
- Communication between ADCRR and any party regarding the commencement of "specialized testing" of batches of pentobarbital.
- Documents related to the "specialized testing" that the State referred to in the motion, as well as records relating to any other testing or proposed testing of batches of pentobarbital, including testing standards, timelines, protocols, or studies, the results of testing and any raw data or notes.

I request that you "promptly respond" and "promptly furnish" the requested records as mandated by A.R.S. § 39-121.01(D)(1) and (E); and also to "promptly respond" with an "index of records" or "categories of records" that are withheld as mandated by A.R.S. § 39-121.01(D)(2) and (E).

Sincerely,

s/Dale A Baich
Dale A. Baich
Attorney Supervisor
Capital Habeas Unit

DAB/ks

# EXHIBIT 4

**From:** Cary Sandman
**Sent:** Thursday, February 24, 2022 5:11 PM
**To:** Jennifer Moreno; ; Amanda Bass; ; ; ; ;

**Subject:** Fwd: Clarence Dixon

Forwarding email confirming quantitative analysis will be provided.

Sent from my iPhone

Begin forwarded message:

> **From:** "Sparks, Jeffrey" <Jeffrey.Sparks@azag.gov>
> **Date:** February 24, 2022 at 3:53:43 PM MST
> **To:** Cary Sandman <Cary_Sandman@fd.org>
> **Cc:** "Gottfried, Michael" <Michael.Gottfried@azag.gov>, Dale Baich <Dale_Baich@fd.org>, Amanda Bass <Amanda_Bass@fd.org>
> **Subject: RE: Clarence Dixon**
>
> Good afternoon Cary,
> Thank you for your email. ADCRR confirms that it will provide you with the requested quantitative analysis, pursuant to D.O. 710, Attachment D, section C.2, within 10 calendar days of today's date.
> Thanks,
> Jeff
>
> Jeff Sparks
> Acting Chief Counsel
> Capital Litigation Section
>
> Office of the Attorney General
> Solicitor General's Office
> Capital Litigation Section
> 2005 N. Central Ave.
> Phoenix, AZ 85004
> (602) 542-4686
> Jeffrey.Sparks@azag.gov
>
> **From:** Cary Sandman <Cary_Sandman@fd.org>
> **Sent:** Thursday, February 24, 2022 1:53 PM
> **To:** Sparks, Jeffrey <Jeffrey.Sparks@azag.gov>
> **Cc:** Gottfried, Michael <Michael.Gottfried@azag.gov>; Dale Baich <Dale_Baich@fd.org>; Amanda Bass <Amanda_Bass@fd.org>
> **Subject:** Clarence Dixon

Good afternoon Jeff. Pursuant to Department Order 710, Attachment D, Sec. C.2 we write to request that you please provide a quantitative analysis of the compounded pentobarbital the State intends to use in the event an execution date is scheduled for Mr. Dixon within ten calendar days of February 24, 2022.

Thanks, and please let us know if you have any questions.

Cary

Cary Sandman
Assistant Federal Public Defender
407 W. Congress
Tucson, AZ
520-879-7541

# EXHIBIT 5

Office of the
**FEDERAL PUBLIC DEFENDER**
for the District of Arizona
**Capital Habeas Unit**

**Jon M. Sands**
Federal Public Defender

**direct line**: (602) 382-2816
**email**: therese_day@fd.org

February 25, 2022

Public Information Officer
Arizona Department of Corrections Rehabilitation & Reentry
1601 W Jefferson
Phoenix, Arizona 85007

Dear Public Information Officer:

I am writing to request public records from the Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR) under the Arizona Public Records Law, A.R.S. §§ 39-101, *et seq*. I seek copies of all records[1] in ADCRR's possession relating to the information identified below from January 1, 2021, through the present date and on an ongoing basis. Moreover, as ADCRR comes into possession of additional records responsive to this request, please provide those as well.[2] Please provide all records in their native format.

On January 5, 2022, the State of Arizona filed a Motion to Set Briefing Schedule for Warrant of Execution for Clarence Wayne Dixon. In the Motion, the State represented that "certain specialized testing of a sample batch" of compounded pentobarbital[3] had been completed and establishes that the drug intended for use in Mr. Dixon's execution has a beyond use date of at least 90 days. *Id.* at 2. I request all records relating to:

---

[1] The term "record" is meant to convey the broadest possible meaning, including but not limited to: correspondence, communications, contracts, logs, telephone logs, reports, printouts of internet research, forms, registrations, certifications, and licenses, maintained in whatever format, including but not limited to written, electronic, or audio format. *See also* A.R.S. § 41-151.18 ("records means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media pursuant to section 41-151.16, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained in the record, and includes records that are made confidential by statute.").

[2] I also renew our request for similar information that we made on July 21, 2021, a copy of which is attached to this letter.

[3] Pentobarbital under any name whatsoever, including but not limited to Nembutal, pentobarbitone, pentobarbital sodium, any non-English equivalents and compounded pentobarbital.

- Communications between ADCRR and any third party, including pharmacists, regarding the beyond use date of pentobarbital intended for use in executions.
- Documents related the beyond use date of pentobarbital intended for use in executions, including but not limited to laboratory results, testing standards, timelines, protocols, and laboratory bench notes.
- Communication between ADCRR and any party regarding "specialized testing" of batches of pentobarbital.
- Documents related to the "specialized testing" that the State referred to in the Motion, as well as records relating to any other testing of batches of pentobarbital, including testing standards; timelines; protocols; and assays or studies, regardless of the formal designation; all other results of testing; and all raw data or notes.

I request that you "promptly respond" and "promptly furnish" the requested records as mandated by A.R.S. § 39-121.01(D)(1) and (E); and also to "promptly respond" with an "index of records" or "categories of records" that are withheld as mandated by A.R.S. § 39-121.01(D)(2) and (E).

Sincerely,

Therese M. Day
Chief, Capital Habeas Unit

TD/jg

# EXHIBIT 6

[redacted]

[redacted]

AZ Department of Corrections
Phoenix, AZ

[redacted]

**DATE** March 02, 2022

[redacted]

**EXAMINATION REQUESTED**

Drug Toxicology

**ITEMS**

6. Amber Vial

**ANALYSIS PERFORMED**

Barbiturates Assay

**RESULTS / INTERPRETATIONS**

6. The following are the results from the analysis of this specimen:

| | |
|---|---|
| Pentobarbital (a derivative of Barbituric Acid) | 460 ± 92 ng/ml |

460 ng/mL multiplied by (100,000:1 dilution) is equivalent to 46 mg/mL.

[redacted]

For quantitative values, the uncertainty of the concentration is given at a level of confidence greater than 95.45%.

[redacted]

# EXHIBIT 7

**From:** Amanda Bass
**Sent:** Friday, March 4, 2022 4:15 PM
**To:** Cary Sandman; ; ; ; Jennifer Moreno; ;
**Subject:** FW: Clarence Dixon

Amanda C. Bass
Assistant Federal Public Defender
Capital Habeas Unit
Federal Public Defender, District of Arizona
Phone: 602-382-2734



---

**From:** Amanda Bass
**Sent:** Friday, March 4, 2022 4:15 PM
**To:** 'Sparks, Jeffrey' <Jeffrey.Sparks@azag.gov>; Cary Sandman <Cary_Sandman@fd.org>
**Cc:** Dale Baich <Dale_Baich@fd.org>; Vidal, Daniel <Daniel.Vidal@azag.gov>; Chiasson, Laura <Laura.Chiasson@azag.gov>
**Subject:** RE: Clarence Dixon

Hi Jeff,

Thanks for sending this over. We'd also like to request that ADCRR please produce the following information related to the "certain specialized testing of a sample batch" of compounded pentobarbital referenced in the State's January 5, 2022 Motion to Set Briefing Schedule in Mr. Dixon' case:

- All documents related to the specialized testing referenced in the State's January 5, 2022 Motion, as well as all records relating to any other testing of batches of pentobarbital, including testing standards; timelines; protocols; and assays or studies, regardless of the formal designation; all other results of testing; and all raw date or notes;
- All documents related to the beyond use date of the pentobarbital intended for use in executions, including but not limited to laboratory results, testing standards, timelines, protocols, and laboratory bench notes;
- All communications between ADCRR and any third party, including pharmacists, regarding the beyond use date of pentobarbital intended for use in execution; and finally
- All communications between ADCRR and any party regarding specialized testing of batches of pentobarbital.

Thanks, and best.

Amanda C. Bass
Assistant Federal Public Defender

Capital Habeas Unit
Federal Public Defender, District of Arizona
Phone: 602-382-2734



---

**From:** Sparks, Jeffrey <Jeffrey.Sparks@azag.gov>
**Sent:** Friday, March 4, 2022 10:47 AM
**To:** Cary Sandman <Cary_Sandman@fd.org>
**Cc:** Dale Baich <Dale_Baich@fd.org>; Amanda Bass <Amanda_Bass@fd.org>; Vidal, Daniel <Daniel.Vidal@azag.gov>; Chiasson, Laura <Laura.Chiasson@azag.gov>
**Subject:** RE: Clarence Dixon

**EXTERNAL SENDER**

Good morning, Cary. Attached is a report documenting the requested quantitative analysis of the compounded pentobarbital ADCRR intends to use in the event an execution date is scheduled based on the pending motion for warrant of execution.
Regards,
Jeff

Jeff Sparks
Acting Chief Counsel
Capital Litigation Section

Office of the Attorney General
Solicitor General's Office
Capital Litigation Section
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-4686
Jeffrey.Sparks@azag.gov

---

**From:** Sparks, Jeffrey
**Sent:** Thursday, February 24, 2022 3:54 PM
**To:** 'Cary Sandman' <Cary_Sandman@fd.org>
**Cc:** Gottfried, Michael <Michael.Gottfried@azag.gov>; Dale Baich <Dale_Baich@fd.org>; Amanda Bass <Amanda_Bass@fd.org>
**Subject:** RE: Clarence Dixon

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Thanks,
Jeff

Jeff Sparks
Acting Chief Counsel
Capital Litigation Section

Office of the Attorney General
Solicitor General's Office
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Jeffrey.Sparks@azag.gov

**From:** Cary Sandman <Cary_Sandman@fd.org>
**Sent:** Thursday, February 24, 2022 1:53 PM
**To:** Sparks, Jeffrey <Jeffrey.Sparks@azag.gov>
**Cc:** Gottfried, Michael <Michael.Gottfried@azag.gov>; Dale Baich <Dale_Baich@fd.org>; Amanda Bass <Amanda_Bass@fd.org>
**Subject:** Clarence Dixon

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Thanks, and please let us know if you have any questions.

Cary

Cary Sandman
Assistant Federal Public Defender
407 W. Congress
Tucson, AZ
520-879-7541

# EXHIBIT 8

[redacted]

# Certificate of Analysis

**CLIENT :** [redacted]

**DESCRIPTION :** Stability - Pentobarbital Sodium 50 mg/mL

[redacted]

**FORMULATION ID :** [redacted]

**DATE RECEIVED :** 09/24/2021

**STORAGE :** 25°C & 60%RH

| Test | Method | Specifications | Results | Date Tested |
|---|---|---|---|---|
| Assay - Pentobarbital Sodium | HPLC / AMIN-2089 | 92.0% - 108.0% | 98.5% (49.2302mg / 1mL) | 12/28/2021 |

Notes

Assay: The referenced method (AMIN-2089) used for this analysis is validated for the specific product being tested under non-cGMP conditions at client's request.

Time = Day 90 of testing at pre-defined timepoints.

[redacted]

01/04/2022

Date

[redacted]

# Certificate of Analysis

**DESCRIPTION :** Stability - Pentobarbital Sodium 50 mg/mL

**DATE RECEIVED :** 09/24/2021
**STORAGE :** 25°C & 60%RH

| Test | Method | Specifications | Results | Date Tested |
|---|---|---|---|---|
| Assay - Pentobarbital Sodium | HPLC / AMIN-2089 | 92.0% - 108.0% | 98.1% (49.0310mg / 1mL) | 01/27/2022 |

Notes

Assay: The referenced method (AMIN used for this analysis is validated for the specific product being tested under non-cGMP conditions at client's request.

Time = Day 120 of testing at pre-defined timepoints.

02/03/2022

Date

# Certificate of Analysis

**DESCRIPTION :** Stability - Pentobarbital Sodium 50 mg/mL

**DATE RECEIVED :** 09/24/2021
**STORAGE :** 25°C & 60%RH

| Test | Method | Specifications | Results | Date Tested |
|---|---|---|---|---|
| Assay - Pentobarbital Sodium | HPLC / AMIN-2089 | 92.0% - 108.0% | 98.1% (49.0497mg / 1mL) | 03/02/2022 |

Notes

Time = Day 150 of testing at pre-defined timepoints.

Assay: The referenced method (AMIN) used for this analysis is validated for the specific product being tested under non-cGMP conditions at client's request.

03/08/2022

Date

# EXHIBIT 9

**From:** Amanda Bass
**Sent:** Thursday, April 14, 2022 1:28 PM
**To:** ; ; ; ; Cary Sandman
**Cc:** Jennifer Moreno;
**Subject:** FW: Clarence Dixon
**Attachments:** Lab Reports.pdf

Amanda C. Bass
Assistant Federal Public Defender
Capital Habeas Unit
Federal Public Defender, District of Arizona
Phone: 602-382-2734



**From:** Sparks, Jeffrey <Jeffrey.Sparks@azag.gov>
**Sent:** Thursday, April 14, 2022 1:20 PM
**To:** Amanda Bass <Amanda_Bass@fd.org>; Cary Sandman <Cary_Sandman@fd.org>
**Cc:** Vidal, Daniel <Daniel.Vidal@azag.gov>; Chiasson, Laura <Laura.Chiasson@azag.gov>
**Subject:** RE: Clarence Dixon

EXTERNAL SENDER

Hi Amanda,
Attached are additional responsive documents just received from ADCRR.
Thanks,
Jeff

**From:** Sparks, Jeffrey
**Sent:** Tuesday, March 15, 2022 6:39 PM
**To:** Amanda Bass <Amanda_Bass@fd.org>; Cary Sandman <Cary_Sandman@fd.org>
**Cc:** Dale Baich <Dale_Baich@fd.org>; Vidal, Daniel <Daniel.Vidal@azag.gov>; Chiasson, Laura <Laura.Chiasson@azag.gov>
**Subject:** Re: Clarence Dixon

Hi Amanda,

Attached are all responsive documents regarding your request for information below.

Thanks,

Jeff

**From:** Amanda Bass <Amanda_Bass@fd.org>
**Sent:** Friday, March 4, 2022 4:15:00 PM
**To:** Sparks, Jeffrey; Cary Sandman
**Cc:** Dale Baich; Vidal, Daniel; Chiasson, Laura
**Subject:** RE: Clarence Dixon

Hi Jeff,

Thanks for sending this over. We'd also like to request that ADCRR please produce the following information related to the "certain specialized testing of a sample batch" of compounded pentobarbital referenced in the State's January 5, 2022 Motion to Set Briefing Schedule in Mr. Dixon' case:

- All documents related to the specialized testing referenced in the State's January 5, 2022 Motion, as well as all records relating to any other testing of batches of pentobarbital, including testing standards; timelines; protocols; and assays or studies, regardless of the formal designation; all other results of testing; and all raw date or notes;
- All documents related to the beyond use date of the pentobarbital intended for use in executions, including but not limited to laboratory results, testing standards, timelines, protocols, and laboratory bench notes;
- All communications between ADCRR and any third party, including pharmacists, regarding the beyond use date of pentobarbital intended for use in execution; and finally
- All communications between ADCRR and any party regarding specialized testing of batches of pentobarbital.

Thanks, and best.

Amanda C. Bass
Assistant Federal Public Defender
Capital Habeas Unit
Federal Public Defender, District of Arizona
Phone: 602-382-2734



**From:** Sparks, Jeffrey <Jeffrey.Sparks@azag.gov>
**Sent:** Friday, March 4, 2022 10:47 AM
**To:** Cary Sandman <Cary_Sandman@fd.org>
**Cc:** Dale Baich <Dale_Baich@fd.org>; Amanda Bass <Amanda_Bass@fd.org>; Vidal, Daniel <Daniel.Vidal@azag.gov>; Chiasson, Laura <Laura.Chiasson@azag.gov>
**Subject:** RE: Clarence Dixon

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Regards,
Jeff

Jeff Sparks
Acting Chief Counsel
Capital Litigation Section

Office of the Attorney General
Solicitor General's Office
Capital Litigation Section
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-4686
Jeffrey.Sparks@azag.gov

**From:** Sparks, Jeffrey
**Sent:** Thursday, February 24, 2022 3:54 PM
**To:** 'Cary Sandman' <Cary_Sandman@fd.org>
**Cc:** Gottfried, Michael <Michael.Gottfried@azag.gov>; Dale Baich <Dale_Baich@fd.org>; Amanda Bass <Amanda_Bass@fd.org>
**Subject:** RE: Clarence Dixon

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Thanks,
Jeff

Jeff Sparks
Acting Chief Counsel
Capital Litigation Section

Office of the Attorney General
Solicitor General's Office
Capital Litigation Section
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-4686
Jeffrey.Sparks@azag.gov

**From:** Cary Sandman <Cary_Sandman@fd.org>
**Sent:** Thursday, February 24, 2022 1:53 PM
**To:** Sparks, Jeffrey <Jeffrey.Sparks@azag.gov>
**Cc:** Gottfried, Michael <Michael.Gottfried@azag.gov>; Dale Baich <Dale_Baich@fd.org>; Amanda Bass <Amanda_Bass@fd.org>
**Subject:** Clarence Dixon

Good afternoon Jeff. Pursuant to Department Order 710, Attachment D, Sec. C.2 we write to request that you please provide a quantitative analysis of the compounded pentobarbital the State intends to use in the event an execution date is scheduled for Mr. Dixon within ten calendar days of February 24, 2022.

Thanks, and please let us know if you have any questions.

Cary

Cary Sandman
Assistant Federal Public Defender
407 W. Congress
Tucson, AZ
520-879-7541

[redacted]

# Certificate of Analysis

[redacted]

**DESCRIPTION :** Stability - Pentobarbital Sodium 50 mg/mL

[redacted]

**DATE RECEIVED :** 09/24/2021
**STORAGE :** 25°C & 60%RH

| Test | Method | Specifications | Results | Date Tested |
|---|---|---|---|---|
| Endotoxin | USP <85> | NMT 0.7 EU / mg | <0.2 EU / mg | 03/24/2022 |
| Sterility - (PRELIMINARY) | USP <71> | Sterile | No Growth at 5 Days | 03/23/2022 |

Notes

Time = Day 180 of testing at pre-defined timepoints.

Sterility: The citation to USP <71> is conditioned on the accuracy of our customer's verification that the sampling program complies with the provisions of USP <71>.

[redacted]

03/28/2022

Date

[redacted]

[redacted]

# Certificate of Analysis

[redacted]

**DESCRIPTION :** Stability - Pentobarbital Sodium 50 mg/mL

[redacted]

**DATE RECEIVED :** 09/24/2021
**STORAGE :** 25°C & 60%RH

| Test | Method | Specifications | Results | Date Tested |
|---|---|---|---|---|
| pH | USP <791> | Report Value | 10.6 | 03/24/2022 |
| Assay - Pentobarbital Sodium | [redacted] | 92.0% - 108.0% | 100.3% (50.1515mg / 1mL) | 03/28/2022 |

Notes

Assay: The referenced method [redacted] used for this analysis is validated for the specific product being tested under non-cGMP conditions at client's request.

Time = Day 180 of testing at pre-defined timepoints.

[redacted]

04/04/2022

Date

[redacted]

[redacted]

# Certificate of Analysis

[redacted]

**DESCRIPTION :** Stability - Pentobarbital Sodium 50 mg/mL

[redacted]

**DATE RECEIVED :** 09/24/2021
**STORAGE :** 25°C & 60%RH

| Test | Method | Specifications | Results | Date Tested |
|---|---|---|---|---|
| Sterility - (FINAL) | USP <71> | Sterile | Sterile | 03/23/2022 |

Notes

Time = Day 180 of testing at pre-defined timepoints.

Sterility: The citation to USP <71> is conditioned on the accuracy of our customer's verification that the sampling program complies with the provisions of USP <71>.

[redacted]

04/06/2022

Date

[redacted]

[redacted]

# Certificate of Analysis

[redacted]

**DESCRIPTION :** Pentobarbital Sodium 50 mg/ml

[redacted]

**DATE RECEIVED :** 04/12/2022
**STORAGE :** 20°C to 25°C

| Test | Method | Specifications | Results | Date Tested |
|---|---|---|---|---|
| Assay - Pentobarbital Sodium | HPLC | 90.0% - 110.0% | 98.2% (49.0968mg / 1mL) | 04/13/2022 |

Notes

The potency method(s) used for testing passed system suitability requirements per [redacted] for non-cGMP analysis. Product specific method validation is not available for this sample and specification(s) are for informational purposes only. Client should verify the specification and analyte reported are correct for the compounded formulation.

[redacted]

04/13/2022

Date

[redacted]

# EXHIBIT 10

**Amanda Bass**

**From:** Amanda Bass
**Sent:** Thursday, April 14, 2022 5:29 PM
**To:** 'Sparks, Jeffrey'; Chiasson, Laura
**Cc:** Cary Sandman
**Subject:** Clarence Dixon I Information Requests

Hi Jeff,

I hope you're well. I'm writing with a few additional information and records requests that we'd like to ask ADCRR to please produce:

- Copies of execution training logs, written materials, training guides, presentations, manuals, curricula, training schedules or any other documents related to execution team member training as required by Department Order 710, Execution Procedures, Section 3.1.1;
- Copies of any documents related to the periodic testing of the equipment referenced in Department Order 710, Execution Procedures, Section 3.1.3;
- The determined beyond-use date (or expiration date, regardless of what ADCRR calls it) for the pentobarbital compounded for use in Mr. Dixon's execution; and finally,
- In light of Mr. Dixon's pending May 11, 2022 execution date, we'd like to also please request that ADCRR provide us with his updated medical records every other day (we appreciate that ADCRR has provided us with Mr. Dixon's medical records every 10 days up to now). We'd also like to request the Observation Records (written and video) for Mr. Dixon referenced in Department Order 710, Execution Procedures, Sections 7.1.6, 7.1.7 and 8.1.3.

Thanks, and best.

Amanda C. Bass
Assistant Federal Public Defender
Capital Habeas Unit
Federal Public Defender, District of Arizona
Phone: 602-382-2734

# EXHIBIT 11

# EXPERT REPORT OF DR. MICHAELA ALMGREN

## I. Background and Qualifications

1. I am a Clinical Assistant Professor in the Department of Clinical Pharmacy and Outcomes Sciences at the University of South Carolina College of Pharmacy. I teach principles of sterile compounding per United States Pharmacopeia ("USP") Chapters 797 and 800, aseptic technique and pharmacy regulations applicable in a compounding environment run under 503B of the Drug Quality and Security Act of 2013, pharmacy law and ethic course, as well as pharmacokinetics and biopharmaceutics courses. I specialize in sterile compounding, medication safety, and pharmacy laws and regulations that relate to pharmacy compounding practices. I also provide continuing education courses for pharmacists in those topics. I received my Doctor of Pharmacy degree from the University of South Carolina College of Pharmacy in 2010. Additionally, I have a Master's Degree in Pharmaceutical Chemistry from the University of Florida.

2. In conjunction with my academic appointment, I currently maintain a practice site at a 503B outsourcing pharmacy where I perform the duties of an outsourcing pharmacist, clinical advisor, and pharmacy student preceptor. Previously, I worked in pharmacy operations in a large teaching hospital as a pharmacist. I have almost 15 years of experience in sterile compounding and aseptic technique. Prior to joining the faculty at the University of South Carolina, I worked for several years in pharmaceutical manufacturing where I was involved in drug formulation, quality assurance, quality control, and analytical method development. My professional qualifications are Doctor of Pharmacy and Master of Science in Pharmacy with a focus on Pharmaceutical Chemistry. A copy of my Curriculum Vitae is attached as Exhibit 1.

## II. Materials Relied Upon.

3. Mr. Dixon's attorneys provided me with the following documents:

a. The Arizona Department of Corrections Rehabilitation and Reentry Order Manual Chapter: 700, Department Order 710—Execution Procedures and attachments ("the Manual") (Exhibit 2);

b. Laboratory report for compounded pentobarbital produced by the State of Arizona on March 4, 2022 ("the Laboratory Report") (Exhibit 3).

4. The attorneys who represent death-sentenced prisoner Clarence Dixon asked me to submit an expert medical and scientific opinion based on the documentation provided to me about: 1) whether the Laboratory Report reflects a quantitative analysis of compounded pentobarbital; 2) whether the Laboratory Report indicates that pentobarbital compounded by the State will be safe and effective for the intended use ; and 3) whether there is a risk of harm associated with using compounded pentobarbital without a verified beyond-use-date ("BUD") or that is expired and, if so, what that risk of harm entails.

5. **Summary of Conclusions**: The Laboratory Report supplied does not provide appropriate quantitative analytical data for the compounded pentobarbital and does not provide accurate information about the drug quality and potency because an improper testing methodology was used. The test results do not indicate the actual amount of pentobarbital in the sample tested and therefore it is not certain that the drug is safe and effective before the intended use. Additionally, no tests were performed to determine sterility or to assess the presence of bacteria or endotoxins. No data on the stability studies has been provided for this drug, thus it is not known if the drug is expired. Once the expiration date of the drug has passed, there is no guarantee that the medication is still safe or effective to use. Expired medications can have unpredictable pharmacological effects due to loss of potency and degradation.

## III. Standards governing the preparation of compounded medications and medication storage, BUD, expiration dating and drug handling.

6. The Manual allows for use of medications that are either commercially available or compounded according to USP standards and guidelines. (Manual p. 27)

7. When drugs are manufactured, they undergo extensive quality control testing which assures that they maintain their quality, such as potency and purity up to their expiration date. Stability studies determine if there are any concerns with drug deterioration and are used to determine commercially prepared drug expiry. During stability studies the medications are tested (for important attributes such as assay, potency impurities, content uniformity, and other attributes that are product specific and typically defined for each product in the USP Compendium for each individual drug) multiple times during the manufacturing process and again when completed and prior to sale. They have stability data showing that they do not degrade before their expiration and their storage container as well as the container closure undergoes extensive integrity testing. Additionally, if these medications are sterile, they undergo extensive sterility testing.

8. When medications are compounded, Active Pharmaceutical Ingredients or "APIs" may be used to prepare them. The compounding is usually done in a pharmacy. Sterile compounding can be done in a Biological Safety Cabinet or Laminar Airflow Hood and it must follow the strict guidelines of USP Chapter 797. USP Chapter 797 describes best practices to follow in order to prepare the product aseptically and to keep it sterile, how to sterilize it, how to maintain the compounding environment free from contamination, how to perform personnel training assessments, how to determine BUDs of sterile compounded products, etc.

9. USP is a compendium of quality requirements, quality specifications, practices, and guidelines to achieve the highest pharmaceutical quality for pharmacy practice as well as the pharmaceutical industry. Chapters 1 through 999 are enforceable by the Federal Drug Administration. A compounding pharmacist should be very familiar with USP 797 guidelines in order to prepare safe and effective sterile compounded products. If USP Chapter 797

guidance is not followed it can lead to medication contamination which will cause patient harm and unpredictable drug effects.

10. BUD refers to Beyond Use Date, or expiry of the compounded product. Since compounded products do not undergo as extensive quality testing as commercially available products, their expiry or BUD is significantly shorter. If a medication is compounded using non-sterile APIs, it is considered to be a high-risk compound. According to USP Chapter 797 the maximum Beyond Use Date for high-risk compounded sterile preparations such as compounded pentobarbital are:

- 24 hours, if stored at room temperature,
- 72 hours, if kept refrigerated, or
- 45 days, if kept in a solid, frozen state.

11. Stability studies are used to determine if there are any concerns with drug deterioration over time and are used to establish extended expiry for compounded drugs, beyond the BUD (Beyond Use Date) which is established in the USP Chapter 797. Stability studies must be performed in order to determine if expiry of the drug can be extended beyond the BUD limits specified in USP Chapter 797. Without performing the adequate stability studies it is not certain that the compounded drug will perform pharmacologically as expected. Stability study requirements are listed and explained in FDA's guidance documents. Accelerated storage conditions can be used to project expiration dates using accelerated studies. The drug substances are stored in their final containers inside of stability chambers with specified storage conditions (for example 25 degrees C, 60% relative humidity, or 40 degrees C with 75% relative humidity for accelerated studies). Regular testing according to USP specified parameters for the drug is performed to determine if any significant changes in drug quality had occurred signalling that the drug is expired and its pharmacological action cannot be guaranteed. These studies are typically done using multiple samples from multiple batches.

12. The APIs used in high-risk compounding are typically not sterile and the product has to be sterilized at the end of compounding. The drug sterility must also be tested as a part of the quality control to assure that the drug is not contaminated with microorganisms.

13. It is important to use the APIs from sources that guarantee high quality and offer USP or pharmaceutical grade APIs, as those are most likely to meet all USP standards.

## IV. The analytical Laboratory Report presented provides insufficient and questionable information. The quality of the compounded drug cannot be verified based on this report because the methodology used for testing is not appropriate.

14. The analytical Laboratory Report provided is inadequate from a pharmaceutical as well as clinical standpoint as it provides very limited information about the drug quality and does not guarantee the potency of the drug. Additionally, it does not meet the requirement specified in the Manual (page 27): "A quantitative analysis of any compounded or non-compounded chemical to be used in the execution shall be provided". The report is not a quantitative analysis because inappropriate method was used to perform this analysis. The report provided for my review appears to be a toxicology assay report analysing the sample for the presence of barbiturates.

15. It is not clear whether this procedure is utilizing a USP pentobarbital injection monograph specified validated method (due to insufficient information), but it does not appear so. The result of the assay does not provide a specific concentration of the pentobarbital in the solution, rather it only expresses the amount as a range (460 +/- 92 ng/ml). This is completely inappropriate as this means that the sample (of the presumably compounded drug that was tested) can contain anywhere between 368 mg to 552 mg of pentobarbital per millilitre of the solution. By stating that the uncertainty of the concentration is given at a level of confidence greater than 95% means that the testing method failure is about 20%, so there is also 20% chance that the result (the actual amount of pentobarbital in the injection) may be

outside of the 460 +/- 92ng/ml range (potentially well below the expected concentration) and not be detected by the analytical method used.

16. An assay, as specified in the USP monograph for pentobarbital should have been used to assess the potency of this medication, as an assay provides an exact number, not a range of possible concentrations. Analytical methods listed in USP are specifically designed to test drug quality, purity and potency of the drug. Typically, the method requires the use of USP standard for calibration and the assay result is expressed as a percentage when compared to the USP standard amount.

17. As per USP Monograph specification for pentobarbital injection, the product should have an assay result of 92 % to 108 %, which represent the range 460 mg to 540 mg, which is a narrower range when compared to the reported value above (368 mg to 552 mg). This means that the compounded drug tested quite possibly does not meet the quality limits set by the USP monograph. This means that the potency of this compounded pentobarbital is possibly not in compliance with USP monograph quality requirement. Based on this report it is actually not definitively known what the exact amount of pentobarbital in the sample tested is.

18. Furthermore, it is not even clear what sample was tested. There is no information provided on what this sample represents.

## V. There is no data on the stability of this drug, required storage conditions (i.e. room temperature, refrigerated, or freezer), or how the expiration or BUD was established.

19. There is no information about the expiry date of the product, no stability study to support any date of expiry or information about the required storage conditions. Thus it is not clear if the drug is still within expiry.

20. According to ASHP Injectable Drug Information guide, aqueous solutions of pentobarbital are not stable and may precipitate if proper conditions for storage are not

maintained. This Laboratory Report does not appear to be a part of the stability study. There is no information provided on when this medication was prepared, how it should be stored and when it expires. There should be a stability protocol that describes in detail how the study is to be performed. The stability studies are important to assure that the quality and potency of the medication is maintained. If the drug is used passed its expiry, the pharmacological effects are unpredictable and thus the drug should not be used.

**VI. Stability studies also help to determine the appropriate storage conditions for the medications that assure the drug will maintain its potency and pharmacological activity. Poor physical storage conditions such as high humidity and temperature frequently cause degradation and contamination of drug products.**

21. Pentobarbital and other compounded sterile products need to be kept in proper storage conditions (as defined by the manufacturer, USP, or stability studies) or they can become damaged, unusable, and unsafe as the temperature and humidity may vary greatly in unmonitored spaces throughout the year. Medications that are expired or have been stored in inappropriate conditions may have unpredictable effects such as lower than expected pharmacological activity, formation of precipitate leading to extreme pain and suffering upon administration, formation of degradants with unexpected pharmacological activity, and other potential problems. There is no information available about how the drug was compounded and whether it was prepared correctly.

**VII. The lack of compounding information regarding the preparation of the pentobarbital injection raises concerns due to the chemical and physical properties of pentobarbital sodium and the complexity of the compound preparation.**

22. The process for compounding pentobarbital is complicated. It is typically performed in one of two ways, though other compounding recipes may be available. A pharmacy preparing this type of compound should have an extensive parenteral compounding experience to be able to prepare this drug correctly. That is the reason why it is important that

the pharmacy records be available for review to assure that the pharmacy compounding this preparation has the expertise as well as the equipment necessary to prepare this drug.

23. In the first version of the compounding procedure, pursuant to the drug monograph listed in ASHP's Handbook of Injectable Drugs, a commercially prepared injection of pentobarbital 50 mg/mL (trade name Nembutal, AHFS classification 28:24.04) is prepared as a mixture containing pentobarbital sodium, propylene glycol 40% v/v, and alcohol 10%1. Additional ingredients are used to stabilize the solution and to produce the final pH of 9.5.

24. There are many considerations when preparing sodium pentobarbital injection in a compounding pharmacy setting per USP <797>. Pentobarbital sodium crystalline powder used as an active pharmaceutical ingredient is not water soluble. Additionally, aqueous solutions of pentobarbital sodium are also not stable per AHFS reference. According to a formulation recipe listed in literature, the API has to be dissolved in water, but the solution must be alkalinized using sodium hydroxide pellets to bring the pH to 12. Otherwise the drug will produce a suspension rather than a solution, meaning that some of the particles will settle out of the mixture. A suspension is not suitable for parenteral use, because it cannot be safely injected, as this could cause extreme pain and suffering. Hydrochloric acid is then added to the solution to bring the pH back down to around 9.8 (until pentobarbital just barely stays in solution). Propylene glycol needs to be added (40% v/v) and alcohol is then also added. The drug is then filtered using a 0.22 micron filter to achieve sterility. A quality control procedure must be performed on the filter afterwards to demonstrate that the filter integrity was maintained. Any changes in pH can cause precipitation out of the solution and a change in the potency of this drug solution. This preparation closely mimics the commercial formulation of pentobarbital injection.

25. In the alternative, pentobarbital injection may be compounded by dissolving the bulk powder in alcohol initially, and then adding polypropylene glycol and water while adjusting the pH, to keep the drug in solution without precipitation.

26. As the two formulation recipes described above illustrate, the preparation of this compounded sterile product is complex, and involves several ingredients and chemical adjustments. It is important to make sure that all the ingredients that are used for compounding are of pharmaceutical grade, with expiration dates past the expiry of the compounded product.

27. No information regarding the process used to compound the pentobarbital injection has been made available, making it impossible to confirm the adequacy of the compounding procedure used, the suitability of the inactive ingredients and their expiration dates, the ingredients and amounts/concentrations used, and whether any adjustments were made to assure that the medication was prepared correctly to produce the desired effect. Only pharmacies with experience in aseptic technique and complex parenteral formulations should prepare this type of preparation, as special equipment, such as a pH meter, laboratory balance, filter integrity testing system and stirring apparatus need to be on hand, and calibrated, with usage logs and procedures describing maintenance, cleaning and calibration of each piece of equipment used.

28. Deviations from the appropriate procedure can significantly impact the efficacy and safety of pentobarbital injection. For example, if there is a shift in concentration of one of the ingredients (perhaps due to the improper storage conditions), this can lead to the formation of precipitant and oxidation of the product, which will also impact potency of the drug and its pharmacological effects. Insufficient potency of the drug will lead to inadequate pharmacological effect and prolonged suffering of the prisoner. A change in pH of the drug due to improper storage, or incorrect addition order of the formulation components can lead to extreme pain during the injection stage of the execution and suffering of the prisoner.

29. The possibility of precipitation of pentobarbital out of solution due to improper preparation or storage is in particular extremely concerning. Injection of a solution containing particles may lead to directly causing severe tissue injury. Occlusion of the affected vasculature causes damage due to thromboembolism which can be extremely painful. Furthermore, if the drug has precipitated out of solution, the potency of the injection will be lower leading potentially to slow and excruciatingly painful death.

## VIII. The compounded drug should be tested according to USP Monograph to assure that it meets all quality attributes for an injectable product.

30. To assess whether the compounded drugs meet quality requirements, they should be tested according to the USP Monograph specific for the product. The tests are listed in the USP Compendium and provide guidance on how to perform the testing as well. These test requirements are extremely important as they define crucial parameters such as assay limits and sterility requirements. Assay testing shows the amount of active ingredient in the formulation. Low assay results mean that the drug contains subtherapeutic levels of active ingredient. Sterility testing confirms that the drug is sterile. Endotoxin testing determines the amounts of endotoxin present in the drug. The presence of impurities will impact potency of the drug and, depending on the type of impurities present, it may also impact the pharmacological activity of a drug. If a drug fails any of the specified quality testing it should not be used because the quality of the drug may be subpar and pharmacological activity is not predictable. Instead, it should be investigated to determine why the failure in quality occurred.

31. The laboratory testing performed for pentobarbital should follow USP monograph for pentobarbital injection. The following tests should be performed for pentobarbital:

a. Assay, acceptance criteria 92.0% -108.0% in conjunction with USP testing for Impurities in Drug Substances;

b. Bacterial Endotoxins test, limit not more than 0.8 USP Endotoxin Units per mg;

c. pH: 9.0-10.5

d. Particulate matter inspection per USP 790

e. Sterility testing per USP 71: must pass.

## IX. Compounding logs and facility records are necessary to ascertain whether the Pharmacy as well as the compounded product is meeting quality requirements.

32. In general, compounding logs must be maintained by the compounding pharmacy to ensure the traceability and quality of the compounded product. This information should include information regarding the preparation of the pentobarbital injection, Certificates of Analysis for all APIs and excipients, pharmacy training documentation (such as sterile glove fingertip testing and media fill testing) of the compounding personnel, including the pharmacy technician preparing the medications, records showing whether the compounding facility meets environmental monitoring requirements, as well as equipment calibration logs for the balances, pH meters, and any other equipment used.

33. Compounding logs must typically include the criteria used to determine the BUD, a master formulation worksheet containing storage requirements and documentation of performance of quality control procedures. Without access to these logs, it is not possible to verify that the drugs are properly prepared and can be used without causing unnecessary suffering to the prisoner.

## X. Summary of Conclusions

34. The Laboratory Report is not an appropriate quantitative report and does not provide reliable information about the potency of the drug. This is particularly concerning because no BUD or expiry information has been provided, thus there is a possibility that the

drug is expired, sub-potent and could be contaminated. The concern is further multiplied by the fact that the storage conditions and compounding methodology are also unknown.

35. Due to the lack of information, it is impossible to assure that the compounded pentobarbital is of the correct composition and potency and will be unexpired. This creates the risk that these drugs will not be sufficiently effective and will not have the necessary pharmacological effect.

Michaela Almgren

Michaela Almgren, PharmD, MS

March 10th, 2022

# EXHIBIT 12

# SUPPLEMENTAL EXPERT REPORT OF DR. MICHAELA ALMGREN

1. The attorneys who represent death-sentenced prisoner Clarence Dixon asked me to submit an expert opinion in this case. I offered an initial expert report on March 10, 2022. I am now supplementing the opinions that I offered in that initial report based on my review of additional documents (attached hereto as Exhibit 4), which are a partial component of stability reports.

2. My experience, qualifications, testimony in prior cases, and fee schedule for this case are set forth in my initial report and accompanying exhibits.

3. More documents, studies, and other pertinent information may become available to me at a later date, and I reserve the right to take such materials into account and to modify or supplement my opinions accordingly. I may also be present at hearings or at trial and may consider any testimony or other evidence related to my opinions and modify/supplement my opinions accordingly.

## I. The stability data provided do not include—and cannot be used—to assign a beyond-use date of the compounded pentobarbital because they contain insufficient information.

4. The Arizona Department of Corrections, Rehabilitation and Reentry Order Manual Chapter: 700, Department Order 710—Execution Procedures and attachments ("the Manual") specifies that the assigned Beyond Use Date (BUD) of the lethal chemical used must be past the execution date.

5. What is labelled as "stability data" provided in the alleged "stability report" is insufficient to be used for the assignment of BUD, as it does not contain all the required information needed for the determination of a parenteral drug's expiry. Thus, the Arizona

Department of Corrections is not in compliance with its own requirements as specified in the Manual.

6. A typical stability study is very carefully designed to address all quality aspects of the medication that need to be considered to assure that the drug maintains its integrity and thus its pharmacological properties over a time period defined by the study. Since the stability studies are used to extend the expiry of the medication, it is important to examine the medication degradation profile as it changes over time.

## II. The "stability data" lack many basic elements of a typical stability study specific for compounded parenteral medication and are insufficient to extend the drug's BUD.

7. No information on the stability study design was provided. The stability study design must be specified in a test protocol, which usually accompanies the stability study results to provide information about the storage conditions, test methodology, quality requirements, container sizes, batch sizes, container closure systems used, etc. All study parameters are carefully selected and examined as they are important to consider when it comes to the drug compounding, packaging, and storage. For example, if a study examines a certain container type with a specific container closure, the stability study findings only apply to this specific container type and closure, and a new study has to be performed if a different type of container closure (i.e., new vial cap) is used.

8. It is also crucial to examine multiple samples of the compounded drug, preferably from multiple batches, to demonstrate that the drug preparations are uniform, and that the results of the study are reproducible even when testing different batches. Typically, three batches are used in a typical study, at a minimum.

9. The results provided in the "stability report" do not specify what samples were used, whether the samples were from the same batch or different, how many vials were tested and what type of storage container and container closure is used for these samples.

10. The study data provided do not specify what compounding recipe was used to prepare this compound, which is important to note in order to identify this study with the specific product. Findings for each stability study are only applicable to a specific compounding recipe; if any ingredient changes are made, which includes changes in the excipients used, a new stability study needs to be initiated.

11. The study data provided does not outline the testing strategy of the timing intervals. According to the records, the sample was received on 9/24/2021. But there is no information regarding when the preparation was compounded and what the initial assay value was, as the first assay test was not performed until 12/28/2021. Most commonly when executing stability studies, the samples are tested initially, then tested monthly to establish some understanding of the drug's degradation process. There are no reports submitted from the samples being tested in October 2021 or November 2021. It is also not clear whether the samples were stored correctly during that time.

**III. Since pentobarbital is a relatively complex preparation, it is important to design the stability study carefully to assure that the drug is tested correctly, and the correct BUD is assigned.**

12. Compounded pentobarbital contains unstable excipients in varying amounts, which are prone to evaporation, oxidation, and precipitation. This can lead to unwanted changes of the compounded drug quality, resulting in changes in pharmacological activity.

13. The excipients, as well as the active pharmaceutical ingredient (API) itself are also rather sensitive to environmental conditions, which can cause the compound to degrade, or cause

the API to form a precipitate. A precipitate is usually formed when a drug starts forming solid crystals and comes out of solution, most often due to changes in temperature or the pH of the solution. This can be a serious quality concern, as injection of a solution containing particles may lead to directly causing severe tissue injury and thromboembolism, which can be extremely painful. Furthermore, if the drug has precipitated out of solution, the potency of the injection will be lower, but it may not be detected necessarily when assay is performed, as the API is still present, just not in pharmacologically applicable state due to crystallization.

14. The study design for this preparation should be detailed and specific to assure that the quality requirements for this medication are met at all test points. Testing methodology should also be provided and included in the protocol to assure the validity of the results provided by the contract laboratory.

**IV. The "stability data" points in the "stability report" provided for review are not complete, because only the assay was performed.**

15. The stability reports are incomplete because only the assay was performed, which only provides information on the potency of the drug.

16. According to the USP monograph for pentobarbital injection, additional tests should also be performed to assure that the medication meets all quality requirements. Additionally, further USP quality requirements for all injectable drugs are specified in USP Chapter 1.

17. One of the important tests listed in the drug monograph, but missing in the purported stability report, is the pH of the compound. The pH is crucial because the wrong pH can result in formation of precipitant, leading to reduction or loss of pharmacological activity of the drug. It can also cause tissue irritation and damage, causing severe pain when infused.

18. Visual inspection should also be performed to assure that the drug does not contain particulate matter, which could indicate the formation of precipitant. Also, any change in color or general appearance should be noted as they can also signal significant changes in drug quality. There is no indication that a visual inspection of the compounded drug was conducted.

19. The presence of impurities should also be examined, especially since the initial quality of the pentobarbital API cannot be verified. (No data for the API were provided. Appropriate data would include origin of the API; Certificate of Analysis for the API, indication of whether the API is of pharmaceutical grade, etc..) There is no information about whether the compounded drug was examined for contaminants or impurities.

20. Sterility should be confirmed for this parenteral preparation to assure that the medication is not contaminated by any microorganisms. Certain microorganisms may alter the quality of active ingredients or excipients, leading to unpredictable pharmacological activity. The sterility of the drug should be tested at the beginning of the stability study, followed by a test of the last sample/study endpoint to demonstrate that the preparation maintained sterility during the entire study. No sterility data has been provided.

## V. Due to the lack of information about the origin of the pentobarbital API, it is important to generate the information pertaining to the initial quality of the API by testing the API according to the requirements specified in the USP monograph for pentobarbital.

21. The assay for pentobarbital API is specified in the USP monograph and should be performed. The acceptance criteria are relatively stringent, and it is important that the API meets these requirements.

22. In addition to the assay, impurities testing needs to be performed. Assays do not test for impurities; they indicate potency of the drug. But impurities can also have impact on pharmacology of the medication. Sometimes impurities present in the drug can be

pharmacologically active and some can have opposing effect on the activity of the active ingredient. This makes pharmacodynamics and pharmacokinetic properties of the drug unpredictable.

**VI. A well-designed stability protocol addressing all the information needed to extend the BUD of the compounded pentobarbital should be performed.**

23. A proper stability protocol needs to be specific in terms of sampling, storage conditions, container, drug formulation, testing frequency and methodology to assure that all quality concerns are addressed, and the BUD established is true and correct.

24. While the assay results reported in the "stability report" indicate that the drug has the potency as specified in the USP monograph, unfortunately this information alone is not sufficient to assume that the compounded medication's BUD can be extended. There are other parameters such as pH, visual inspection, impurities assay and sterility studies that need to be also included—and for which no information was provided—in order to offer a complete and accurate picture of the drug quality and provide assurance that the medication will perform as expected. The presence of pharmacologically active impurities, precipitant or microbial contamination cannot be ruled out at this time. Any of those factors can cause changes in pharmacology, pharmacokinetic and pharmacodynamic activity of the drug leading to unpredictable effects. This in turn can lead to unnecessary pain and suffering when injected.

**VII. Conclusion**

25. The "stability data" provided is insufficient to establish the BUD of the compounded pentobarbital because the study did not include data from a number of additional tests set forth in the USP monograph for pentobarbital that are necessary to the determination of a parenteral drug's expiry. Consequently, it is not possible to determine whether the compounded drug that the Arizona Department of Corrections intends to use in Mr. Dixon's execution is

appropriate for this use. Based on the information the Department provided, it appears that the Department is out of compliance with its own requirements as specified in the Manual.

Michaela Almgren, PharmD, MS

March 31st, 2022

# EXHIBIT 13

# DECLARATION OF TARA CUCCINELLI

I, Tara Cuccinelli, declare under penalty of perjury the following to be true to the best of my information and belief:

1. My name is Tara Cuccinelli RN, MS, CNS and I am a forensic nurse expert at Godoy Medical. Please refer to my CV for professional positions, education and training.

2. On March 15, 2022, I was contacted by the Federal Public Defender's Office for the District of Arizona to review the medical records of Clarence Dixon and opine on his current physical condition. An index that reflects all of the records that I reviewed is attached hereto as Exhibit A.

3. **Cardiac Problems**: Mr. Dixon's cardiac history started as a child with the diagnosis of coarctation (or narrowing) of the aorta which required surgical intervention to widen the aorta. The aorta is responsible for delivery of oxygenated blood from the heart to the rest of the body. The repair of his aorta caused several long- term complications for Mr. Dixon including a right bundle branch block, slow heart rate, high blood pressure and right axis deviation. As a result, Mr. Dixon's heart is not working as efficiently as it should.

4. According to the American Heart Association (2022) the most common problem adults encounter after surgical repair of the narrowing of the aorta as a child is high blood pressure. In addition, patients who underwent surgical repair are at risk for re-narrowing of the aorta or enlargement of the aorta which could lead to an aortic aneurysm or rupture. If the aorta re-narrows it does not allow adequate blood flow to reach other organs causing them not to function properly. If the aorta ruptures or bursts it can significantly reduce blood flow and the mortality rate is extremely high.

5. A right bundle branch block affects the heart's ability to pump efficiently and can decrease the volume of blood pumped by the ventricles. The pressure Mr. Dixon's heart pumped against to maintain good blood flow over time caused damage to the heart muscle. This damage can lead to heart failure. The fact that his electrocardiogram shows us a right axis deviation further reveals the structural effects on the right side of the heart. These structural effects on the heart's ability to pump could be caused by lung disease, right sided thickening of the ventricle or a right bundle branch block. Mr. Dixon suffers from all three.



Initials TC

6. **Pulmonary Problems**: Mr. Dixon pulmonary history includes chronic obstructive pulmonary disease, Valley Fever and COVID. These three disease processes have resulted in damage to Mr. Dixon's lungs that impair his ability to draw in a breath and have good oxygen exchange. His chest x-ray revealed a flattened diaphragm which impairs the lung's ability to draw in a breath. In 2021 a chest CT shows hyperaeration, this tells us air is getting stuck in the lungs causing this hyperinflation. This air trapping is seen because the alveoli become less elastic and hold on to the air which interferes with gas exchange. Both of these structural changes occur in patients with COPD.

7. In 2020 Mr. Dixon was diagnosed with Valley Fever. Valley Fever is a fungal infection that results from inhalation of Coccidioides spore. Mr. Dixon's cases would be considered severe as he had nodules noted on chest CT and required six months of oral antifungal therapy to clear the infection. In addition, it was considered disseminated as he had a fungal rash on his legs. Patients who experienced a more severe infection are at increased risk for serious or long-term complications in lungs (Centers for Disease Control, 2020).

8. Mr. Dixon was diagnosed with COVID which is also implicated in lung vasculature damage. He had a chest x-ray done in May of 2020. It showed that Mr. Dixon had bilateral ground glass opacities. This indicates that there is increased density or something filling the air space in the lungs. Whatever is filling that space, most likely infection in this case, can cause long term scarring and complications.

9. Mr. Dixon's significant pulmonary history suggests his lungs are fragile. The pulmonary edema that can be caused by the administration of Pentobarbital is a concern as Mr. Dixon's ability to exchange gas is impaired along with the functional integrity of his lungs.

10. **Hepatic Issues**: Mr. Dixon's medical records first mention wasting syndrome in 2012. Wasting syndrome is characterized by unintentional weight loss, anorexia and muscle wasting. Before the diagnosis his weight had been between 140 and 150 pounds. Over the last year his weight has been in the 110-pound range. At five feet eight inches tall and a weight of 110 pounds, Mr. Dixon's body mass index is 16.7% categorizing him as underweight.



Initials TC

11. Wasting syndrome is usually caused by cancer or a chronic inflammatory disease such as COPD. It is a complex medical syndrome. It can cause alteration in liver metabolism due to inflammation (Webster, 2020).

12. **Aging**: Mr. Dixon's age also has a role in drug metabolism and distribution. As the body ages both functional and structural changes occur in every organ. The heart loses elasticity, the kidney ability to filter slows, the liver experiences both decreased mass and blood flow (Mangoni, 2004). Hepatic clearance (the way the liver metabolizes medications) can be reduced by 30% (iKlotz, 2009). Elderly patients have increased sensitivity to medications that affect the central nervous system like Pentobarbital. Pentobarbital should be used with caution in older patients.

13. Mr. Dixon's heart, lungs and liver all show damage that likely will alter the way the drug is both delivered and metabolized. There is no way to absolutely know how a medication will affect an individual with compounding disease and age changes but based on what we do know Mr. Dixon is more likely to have a different response. His lungs, liver and heart are damaged enough that it might take longer to circulate the medication to reach full toxicity dose leaving him feeling some of the effects of the Pentobarbital but not all of them. Given Mr. Dixon's age and past medical history it is my expert opinion that lethal injection using Pentobarbital would likely result in undue suffering for the reasons explained.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of April, 2022.

Tara Cuccinelli
Name (Printed)

Tara Cu — RN, MS, CNS
(Signature)

Larkspur, Colorado
City, State



Initials TC

# EXHIBIT A

**List of Documents Reviewed**

Ft. Defiance Indian Hospital records (1957-1976)

Arizona Department of Corrections, Rehabilitation & Reentry Medical Records from 1978 through March 11, 2022

ADCRR and Arizona State Hospital Record Summaries by FPD, as of March11, 2022

# EXHIBIT B

GODOY
MEDICAL FORENSICS
INCORPORATED

# Tara Cuccinelli RN, MS, CNS

Larkspur, CO

## EDUCATION

**University of Colorado, Denver** **2014-2016**
Masters of Science in Nursing, Adult Gerontology Clinical Nurse Specialist

**University of Colorado, Colorado Springs** **2012-2014**

**Bellarmine University, Louisville** **1993-1997**
Bachelor of Science in Nursing, Cum Laude

## SPECIALTY AREAS

- Emergency Nursing
- Trauma Nursing
- School Nursing
- Adult/Gerontology Nursing
- Nurse Leadership/Mentoring
- Military Nursing

## CERTIFICATIONS

Registered Nurse Licensure – CO RN0171107
Basic Life Support
Advanced Practice Nurse Clinical Nurse Specialist - APN0992935CNS
Acute Care Clinical Nurse Specialist Board Certified (ACCNS-BC) (previously held)
Acute Care Clinical Nurse Specialist Adult Gerontology (ACCNS-BC) (previously held)
Certified Pediatric Emergency Nurse (previously held)
Advanced Cardiac Life Support Provider (previously held)
Certified Emergency Nurse (previously held)

## EXPERIENCE

**Godoy Medical Forensics, Inc.** **2021-Present**
*Forensic Nurse Expert*

- Provide expert consultation in legal cases involving medical care, including medical record review, analysis, research, and merit determination.

# Tara Cuccinelli RN, MS, CNS

**St. Peter and St, Mary's Catholic School** **2020-Present**

*Health Care Consultant and School Nurse*

- Responsible for planning, implementing, coordinating and evaluating school health services. Identify health care needs of students with chronic or acute disease processes and collaborates with parents and staff to promote optimal level of wellness.
- Collaborate with administration and local health department to ensure compliance with COVID guidelines and reporting. Use nursing expertise to advise schools on best practice for COVID pandemic.

**UC Health Memorial Hospital** **2016-2018**

*Clinical Nurse Specialist Emergency Services*

- Provided consultation and clinical expertise in three Emergency Departments including a Level One Trauma Center that was both chest pain and stroke accredited. Worked within the three spheres of influence: patient, nurse and system to identify gaps in health care delivery and implemented evidence-based practice to improve care and patient outcomes in the Emergency Department.
- Responsible for policy development and compliance with existing polices. Represented the Emergency Department on several committees that reviewed patient charts as expert in clinical care to identify gaps in care and areas of improvement.

**Memorial Hospital Univ. of Colorado** **2011-2016**

*Emergency Nurse Residency Advisor/Educator*

- Supervise, coordinate and instruct Emergency Nurse Residents through their 16-week orientation to the Emergency Department. Teach weekly eight-hour didactic classes to prepare emergency nurse residents for the challenging patients and complex disease processes that will encounter during and after their orientation. Incorporate pathophysiology, simulation, evidence-based practice, and case studies to enhance their learning experience.
- Clinical work in the ED to maintain proficiency.

**Memorial Hospital Univ. of Colorado** **2010-2011**

*Patient Service Administrator (Nursing Supervisor)*

- Provided supervisory coverage of patient care areas and the hospital during all shifts. Responsibilities require knowledge of hospital and nursing policies and procedures, allowing independent judgment in their interpretation.
- The Nursing Supervisor duties include provision of managerial and clinical links between the nurse manager and department direction in their absence, and the administrator-on-call

**Memorial Hospital Univ. Colorado** **2005-2010**

*Registered Nurse*

- Performed a variety of nursing roles including clinical staff nurse, charge nurse, and clinical coordinator for a busy 72-bed emergency department.
- Responsibilities included supervision of staff and caring for patients across the age spectrum.

**United States Army – Ft. Carson, CO** **2003-2005**

*Nurse Manager Emergency Department*

- Accountable for all patient care practices by RN's and EMT's for a 21-bed emergency department. Ensured quality standards were maintained, performed annual and as-needed performance reviews, and guided and mentored both military and civilian nurses to ensure evidence-based practice.

**United States Army – Baghdad, Iraq** **April 2003-Oct. 2003**

*Head Nurse Emergency Department 28th Combat Support Hospital*

- Responsible for the initial set up of the first fixed facility hospital in Bagdad, Iraq. Accountable for all patient care practices by RN's and EMT's in a 14-bed emergency department, including training in mass causality events and enemy prisoners of war.

**United States Army – Ft. Carson, CO** **March 2002-March 2003**

*Charge Nurse Emergency Department*

- Responsible for smooth and efficient patient flow. Delegated patient assignments and provided supervision for RN's and support staff. Worked with medical providers to ensure quality patient care.
- Attached to 10th Combat Support Hospital as Emergency Department Nurse. Deployed to Kuwait in support of Operation Iraq Freedom.

**United States Army- Seoul, Korea** **2000-2001**

*Officer in Charge Trauma/Triage 127th Forward Surgical Team*

*Charge Nurse Emergency Department*

- Responsible for set up and initial patient care and stabilization far forward on the battlefield in small, mobile surgical unit designed to provide damage control surgery within the "golden hour" of injury.

**United States Army – Ft. Benning, GA** **1999-2000**

*Charge Nurse Emergency Department*

- Responsible for smooth and efficient patient flow in busy Level II trauma center. Delegated patient assignments and provided supervision for RN's and support staff. Worked with medical providers to ensure quality patient care.
- Attached to 21st General Hospital and participated in joint training field exercises as an Emergency Department Nurse.

**United States Army – Ft. Benning, GA** **1997-1999**

*Charge Nurse Mom/Baby Unit*

**Columbia Audubon Hospital** **1994-1997**

*Nursing Extern/Monitor Tech*

## PUBLIC SPEAKING & PRESENTATIONS

**Trauma Nurse Core Course (TNCC)**
TNCC is an international and national two-day 16-hour course that teaches nurses a systematic approach and the core knowledge of caring for a trauma patient. Consists of both lectures and hands on interactive small groups. As course director responsible for all administrative support, lecturing along with ensuring content taught was in line with the Emergency Nurses Association and current research. Course directed three two-day courses a year.

TNCC lectures that were taught include: The Trauma Nursing Core Course and Trauma Nursing Epidemiology, Biomechanics and Mechanisms of Injury, Initial Assessment, Airway and Ventilation, Shock, Brain and Cranial Trauma Ocular, Maxillofacial, and Neck Trauma, Thoracic Trauma, Abdominal Trauma, Spinal Cord and Vertebral Column Trauma, Musculoskeletal Trauma, Surface and Burn Trauma, Special Populations: Pregnant, Pediatric, and Older Adult Trauma Patients, Disaster Management, Psychosocial Aspects of Trauma Care, Transition of Care for the Trauma Patient and Demonstration of the Trauma Nursing Process Station.

**Emergency Nurse Pediatric Course (ENPC)**
ENPC is a two day 16-hour certification training course designed to provide core-level pediatric knowledge and psychomotor skills needed to care for pediatric patients in the emergency setting. The course presents a systematic assessment model, integrates the associated anatomy, physiology and pathophysiology, and identifies appropriate interventions. As course director and instructor responsible for all administrative duties along with lecturing and hands on skill stations. Course directed two courses a year.

ENPC lectures taught include: Epidemiology, From the Start, Prioritization, Initial Assessment, Pain, Common Procedures and Sedation, Medication Administration, Vascular Access, Respiratory Emergencies, Childhood Illness, The Neonate, The Adolescent, Shock, Rhythm Disturbances, Trauma, Toxicological Emergencies, Behavioral Emergencies, Environmental Emergencies, Child Maltreatment, Crisis, Disaster, Stabilization and Transport, Management of the Ill or Injured Pediatric Patient

## CONFERENCES AND FURTHER EDUCATION

**Trauma Investigations Conference** **November 2021**
*Babies and Toddlers*

**American Academy of Forensic Sciences Conference** **February 2022**
*Seattle, WA*

# Tara Cuccinelli RN, MS, CNS

## QUALITY IMPROVEMENT PROJECTS

- Implementation of ED Inpatient Risk Score Tool – May 2016
- Mentorship Program – August 2015
- Chart Audit Program – January 2015

## COMMUNITY SERVICE

President School Advisory Committee – St. Peter Catholic School – 2014-2020
Volleyball Coach (5th and 6th grade girls) – St. Peter Catholic School – since 2014

## HONORS/AWARDS

Distinguished Military Graduate- University of Louisville 1997
Army Achievement Metal- 2000 and 2001
Army Accommodation Metal- 2002 and 2005
Bronze Star- 2003
Nurse of the Year Memorial Hospital ED- 2008
Nursing Excellence Award Structural Empowerment UCHealth- 2018

# EXHIBIT 14

[redacted]

[redacted]

[redacted]



[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

**DATE** March 19, 2021

[redacted]

[redacted]

**EXAMINATION REQUESTED**

Drug Toxicology:

**ITEMS**

1. Amber bottle labeled "Lot # 28502"

**RESULTS / INTERPRETATIONS**

1. The following are the results from the analysis of this specimen:

| Drug/Drug Category | Result |
|---|---|
| Pentobarbital (a derivative of barbituric acid) | 580 ng/ml |

580 ng/mL multiplied by (100,000:1 dilution) is equivalent to 58 mg/mL.

Items# 2, 3, and 4 were received but not analyzed.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

**DATE** March 31, 2021

[redacted]

**EXAMINATION REQUESTED**

Drug Toxicology:

**ITEMS**

5. Amber bottle, Lot# 29114

**RESULTS / INTERPRETATIONS**

5. The following are the results from the analysis of this specimen:

| Drug/Drug Category | Result |
|---|---|
| Pentobarbital (a derivative of barbituric acid) | 500 ng/ml |

500 ng/mL multiplied by (100,000:1 dilution) is equivalent to 50 mg/mL.

[redacted]

[redacted]

[redacted]

[redacted]